HERBERT
SMITH
FREEHILLS

LIBOR TRANSITION STATUS UPDATE

OCTOBER 2020

Contents

Page

LIBOR TRANSITION REACHES ITS “ENDGAME” 2

WHAT IS HAPPENING AND WHY? 4

SCOPE OF THE PROBLEM – MARKETS AFFECTED AND GEOGRAPHICAL EXPOSURES 6

CURRENT STATUS IN KEY MARKETS 8

IMPACT OF COVID-19 13

PROPOSED LEGISLATIVE INTERVENTIONS ON TOUGH LEGACY CONTRACTS 14

LITIGATION AND REGULATORY RISKS 17

NEXT STEPS FOR FINANCIAL SERVICES FIRMS 19

CONTACT DIRECTORY 20

LIBOR transition reaches its "endgame"

The cessation of the London Inter-bank Offered Rate (**LIBOR**) at the end of 2021 has long been an issue vexing the global financial services industry given the scale and geographic spread of exposures to the affected benchmarks across the currencies and terms in which it is published. As we reach what Andrew Bailey, Governor of the Bank of England (**BoE**), has called the "endgame", we have drawn together in this publication the key recent developments and summarised the current status in the most impacted product markets at this critical juncture. The International Swaps and Derivatives Association (**ISDA**) has now published its long-anticipated Supplement to its 2006 Definitions to introduce the fall-back and associated triggers, which have achieved broad market consensus in its extensive industry consultations, together with the associated Protocol for legacy contracts. It is clearly the hope and expectation of the regulators in the primary LIBOR jurisdictions that market participants will kick on with the next phase of transition to Risk Free Rates (**RFRs**).

Whilst there is a recognition that the disruption caused by COVID-19 has had an inevitable impact on the efforts of banks around the globe to move forward with their transition plans, it has been made clear by the regulators that there will be no major shift in the timetable for banks to achieve completion, even if some interim milestones have been adjusted. Indeed, the events of the last few months have, in those regulators' minds, made the case for transition even more compelling. There was a clearly observable spike in LIBOR rates during the height of disorderly markets in March and April this year, which increased the basis between LIBOR and the RFRs. During that period, underlying inter-bank transactions dried up to nil and the LIBOR submissions made on the basis of banks' expert assessment reflected the amplifying impact of the credit component of LIBOR. This will *prima facie* have made it more expensive for borrowers on a LIBOR rate than it would have been for them on an RFR. Regulators have been quick to use this observation to emphasise the message to borrowers that remaining on the LIBOR rate is not beneficial for them.

There is no doubt that the publication of the ISDA Supplement and Protocol represent important milestones for the market. In addition, a significant number of new bonds referencing RFRs have been issued in the past year and there have been important developments in other cash markets with momentum beginning to build in some jurisdictions towards the adoption of RFRs in new single and multi-currency facility agreements (assisted by the BoE joining the Federal Reserve Bank of New York (**NY Fed**) in publishing an RFR index to aid parties' calculation and verification of compounded RFRs). However, there are some cash products where the unavailability of forward-looking RFRs continues to cause significant difficulties and alternatives are having to be explored. Overall, it is fair to say that there is much work still to do to be in a position to meet regulators' expectation that there will be no new LIBOR-linked products by the new deadline of end of Q1 2021 so that focus can then shift to ensuring the transition of legacy products to robust fall-backs.

It is likely that the publication of the ISDA Protocol will act as something of a starting gun firing on the commencement of transition plans to address legacy contracts. In the cash markets there is currently no clear consensus as to the appropriate conventions to adopt for the RFRs and the necessary spread adjustment to avoid a transfer of value upon the switch, although documents which grapple with these issues have been published by the Loan Market Association (**LMA**) and the influential Alternative Reference Rates Committee (**ARRC**) in the US in recent weeks. Concerns about the impact of COVID-19 on transition preparation, as well as focus on certain products where it is considered to be very difficult or even impossible to achieve the necessary amendments by the end of 2021 has led, in the last few months, to a significant shift in the authorities' approach to legislative measures to prevent a cliff-edge situation. In March 2020, the ARRC published draft legislation for New York-governed contracts and both the UK Government and the European Commission have recently announced their own mechanisms for a legislative solution. The final formulation of those solutions, whether legislatures in other key jurisdictions follow suit and how the different solutions will interact with one another will all be key issues to watch over the next two quarters since they impact the consequences for institutions of any contracts which do not effectively transition.

It is noteworthy that there remains a clear variance in the level of regulatory activity between geographic markets. The UK and US regulators, working closely with the Working Group on Sterling Risk-Free Reference Rates (**RFRWG**) and ARRC, respectively, have been leading the way. This is not surprising

since the Financial Conduct Authority (**FCA**) is the home regulator of LIBOR and the US has the largest exposure to LIBOR. Whilst regulators in other key global financial centres have also been heavily engaged with the banks under their supervision, a report by the Financial Stability Board (**FSB**) in July 2020 made clear that there remain important jurisdictions, with high exposure to US$ LIBOR in particular, where the regulatory authorities are behind in their activities to promote the transition efforts of the banks that they supervise. It is expected that those regulators will be strongly encouraged to make significant efforts in the remainder of this year to catch up.

As we have been saying for some time now, the remainder of 2020 is likely to be an important period and we will see the pace of preparatory steps quicken into 2021 as the industry navigates through the “endgame”.

What is happening and why?

Why LIBOR is ceasing

The case to replace LIBOR (and other IBORs) has its roots in the LIBOR manipulation scandal, where traders at some banks were found to have made false LIBOR submissions in an attempt to influence the rate. However, it is not merely historic manipulation issues which have triggered its demise. The way in which banks fund themselves has changed and they no longer rely to any significant extent on unsecured borrowing in the interbank markets to fund their balance sheets, as they once did.

The decline of the interbank unsecured funding markets means that there are few real transactions on which the submitters at panel banks can base LIBOR submissions. As a result, LIBOR has been described as "measuring the rate at which banks are not borrowing from one another"[1], based primarily, and dangerously in the eyes of the regulators, on the expert judgement of those panel banks. Accordingly, notwithstanding efforts to improve the robustness of the LIBOR-setting methodology, LIBOR no longer does what it was intended to do and remains inherently vulnerable to misconduct.

It was for this reason that, in July 2017, the FCA confirmed that it will no longer compel panel banks to continue to provide quotes for LIBOR after the end of 2021 (as it has done since the LIBOR scandal shone a light on the risks to submitting banks)[2]. In the absence of that compulsion, it is the general expectation that some or all panel banks will cease to make submissions. It is uncertain precisely how quickly it will happen but, as a result, LIBOR will become unrepresentative or even no longer capable of being published after that date.

What will LIBOR be replaced with?

Extensive work has been conducted in each currency jurisdiction to identify robust replacement rates for LIBOR, with a focus on rates which were supported by real transactions in highly liquid markets, seeking to avoid a repeat of the need to rely on judgements to calculate the rates. The following RFRs have developed as the preferred rates in each of the key currencies impacted by LIBOR cessation:

Figure 1: List of preferred RFRs

Currency	RFR	Description
GBP	Reformed SONIA (Sterling Overnight Index Average)	Unsecured overnight rate based on the rate at which interest is paid on sterling short-term wholesale funds where credit, liquidity and other risks are minimal
USD	SOFR (Secured Overnight Financing Rate)	Secured rate based on transactions in the US Treasury repo market
JPY	TONAR (Tokyo Overnight Average Rate)	Unsecured rate based on uncollateralised overnight call rate market transactions
CHF	SARON (Sales Average Rate Overnight)	Secured rate based on data from the Swiss repo market
Euro	€STR (European Short-Term Euro Rate) – alternative rate to EONIA	Unsecured rate to reflect wholesale euro unsecured overnight borrowing transactions with financial counterparties
SGD	Singapore Overnight Rate Average (SORA)	Unsecured rate to reflect the volume-weighted average rate of all SGD overnight cash transactions brokered in Singapore between 9:00 to 18:15 SGT

However, the RFRs differ in nature to the LIBOR rates in several important respects, meaning that the RFRs are not necessarily appropriate for all contracts in which LIBOR is currently used. Even for those where they are, a simple replacement of any reference to a LIBOR rate in the contract with the relevant RFR is not appropriate. Unlike LIBOR, which resets periodically in advance (ie is a forward-looking term rate), takes into account term credit risk and interest rate changes over the tenor and pays in arrears, the RFRs reset daily, are backward-looking and are overnight, so have virtually no term credit risk priced in. The differences in the way the two rates operate therefore present various challenges. For example, it means that the RFRs will inherently be lower, so that replacing LIBOR with the relevant RFR without adjustment will result in a value transfer.

[1] Andrew Bailey, "Speech on Interest rate benchmark reform: transition to a world without LIBOR" (London: Bloomberg, 12 July 2018), heading titled "How do we transition to a world without LIBOR?" available at: https://www.fca.org.uk/news/speeches/interest-rate-benchmark-reform-transition-world-without-libor.

[2] Andrew Bailey, "Speech on The future of LIBOR" (London: Bloomberg, 2017) available at: https://www.fca.org.uk/news/speeches/the-future-of-libor.

Figure 2: Key differences between LIBOR and RFRs

	LIBOR	RFRs
Term	Term rate with 7 tenors (Overnight/Spot Next, 1 Week, 1 Month, 2 Months, 3 Months, 6 Months and 12 Months)	Overnight rate
Reset	Resets periodically in advance so interest known at start of period	Resets daily in arrears so interest not known in advance
Credit Risk	Unsecured and reflects inherent credit risk	Secured/unsecured but little or no credit risk given it is an overnight rate

Scope of the problem – markets affected and geographical exposures

LIBOR cessation presents a problem of immense scope, affecting diverse product areas across global financial markets. Impacted products include both retail and wholesale products within the cash, derivative and bond markets.

The most directly affected geographical markets impacted by LIBOR cessation are the UK, US, Japan, Switzerland and the European Union, as LIBOR rates are published in the currencies of those countries. However, the issue has a significant impact in geographical markets well beyond those countries, primarily as a result of the prevalence of financing in, or linked to, US dollars which creates a potential exposure to US$ LIBOR.

Furthermore, LIBOR rates are an input into a number of other benchmarks (for example, the Singapore SOR, Philippines PHIREF and Thailand THBFIX), meaning that the relevant regulators of those benchmark rates must grapple with the need for appropriate changes to their calculation once LIBOR cessation occurs.

Roles played by the regulators and industry bodies

The consistent mantra from the regulators has been that the issues caused by LIBOR cessation were created by the industry and it is the industry that must fix them. Notwithstanding this, the key regulators in the UK and US, as well as those in other key financial centres, have in fact been highly active in their public pronouncements, policies and supervisory activity to encourage and facilitate the proactive transition from LIBOR to the RFRs.

In addition, in the UK and US (as well as other key jurisdictions), influential working groups (the ARRC in the US and the RFRWG in the UK) have been established for several years and have been critical to driving forward essential elements of the transition. The membership of the working groups is made up of private sector market participants as well as ex officio participants from regulatory and government stakeholders. Each has been highly active in producing industry best practices, milestones, guidance and analysis to take forward the transition to the RFRs.

Given the impact on the markets they represent, there has also been active engagement from the industry bodies for each of the markets and the working groups which have been established in key jurisdictions, each of which have focused on seeking to build consensus on standard documentation and calculation conventions to allow the effective adoption of the RFRs in a way that takes into account the specific characteristics and needs of their market. To facilitate transition of legacy contracts, each has also sought to build consensus in the identification of a methodology to produce the spread adjustment that will seek to mitigate the value transfer which would otherwise occur upon replacement of a LIBOR rate with the relevant RFR (given that the RFRs are inherently lower than LIBOR rates).

The key industry bodies involved in shaping the approach to the upcoming transition include:

- ISDA has led efforts to build a consensus within the derivatives market. Moreover, since the derivatives market is broadly regarded as the most exposed to LIBOR cessation, ISDA has been at the forefront of industry efforts to progress LIBOR transition as a whole. Following several consultation processes relating to the development of different aspects of its transition mechanism, ISDA has now published the Supplement (to make amendments to its 2006 Definitions to incorporate the fall-backs which will take effect from 25 January 2021) and the Protocol (which will facilitate incorporating those amendments into legacy derivative contracts if both parties elect to do so)[3].

- The LMA, and its counterpart in APAC – Asia Pacific Loan Market Association (**APLMA**) – who have sought to engage with the loan markets to educate and encourage the development of consensus on the conventions which it will be necessary to adopt to allow transition. The LMA has produced various helpful resources including Exposure Drafts of various documents to amend legacy loans and document loans switching from

[3] See International Swaps and Derivatives Association, "Benchmark Reform and Transition from LIBOR", available at https://www.isda.org/2020/05/11/benchmark-reform-and-transition-from-libor/.

LIBOR to RFRs, and a list of loans referencing RFRs[4].

- The Association for Financial Markets in Europe (**AFME**), together with its sister organisation, the Global Financial Markets Association (**GFMA**) has sought to engage with participants in the capital markets and has published a range of documents to seek to assist those participants with the steps needed to prepare for LIBOR cessation. This has included model wording for new issues of securitisation bonds to help facilitate the transition from IBORs to new RFRs.

[4] See Loan Markets Association, "List of RFR referencing syndicated and bilateral loans", available at https://www.lma.eu.com/application/files/2315/8996/5312/List_of_RFR_referencing_bilateral_and_syndicated_loans_May_2020.pdf

Current status in key markets

The derivatives market

The derivatives market is widely regarded as the market which has the greatest degree of exposure to LIBOR cessation as a result of the volume of legacy derivative contracts which reference LIBOR rates and are due to expire beyond the end of 2021. The existing fall-back to LIBOR rates in the standard ISDA documentation is to a "dealer poll method" (requiring the participation of "reference banks" in providing quotes) which, in a scenario where LIBOR has been permanently discontinued, is very unlikely to be effective.

It is therefore no surprise that ISDA has led the way across the industry and has employed considerable resources in its efforts to consult with, and seek consensus within, the derivatives market on how to address LIBOR cessation in its documentation.

These efforts have culminated in the publication of a Supplement to its 2006 Definitions which replaces, as of 25 January 2021, the existing LIBOR definition so that robust fall-backs to relevant RFRs for each currency are incorporated, together with a Protocol which allows parties to incorporate those same fall-backs into their legacy contracts through an effective and efficient adherence process.

The Supplement

The Supplement amends the 2006 ISDA Definitions, which is the standard form definitional booklet incorporated into interest rate derivatives entered into on ISDA terms (ie subject to one of the ISDA master agreements). It introduces robust fall-backs to the existing LIBOR rates by deleting references to those rates and replacing them with references to the relevant LIBOR rate until the occurrence of a trigger event.

Upon that trigger event, the relevant RFR fall-back rate applies. Significant efforts have been expended to achieve consensus on the way in which the RFR should be adjusted for the purpose of the fall-back. Taking GBP LIBOR as an example, the primary fall-back rate is a term adjusted SONIA calculated as a compounded average in arrears over the corresponding period plus a spread adjustment. That spread adjustment will be a fixed number calculated on the trigger date as the median, over a five year look-back period, of the historical difference between the relevant LIBOR rate and the relevant RFR.

The new definition also incorporates a waterfall of fall-backs which would apply in the event that the adjusted RFR rate is no longer available, including within that waterfall a Recommended Rate, being a rate recommended by the benchmark administrator or an appropriate committee nominated by the applicable regulator, and an ultimate backstop of the central bank base rate. The intention of this waterfall of fall-backs is to protect against the need for any repetition of this process arising in the future.

The Protocol

The Supplement acts to incorporate the new fall-backs automatically into new interest rate derivatives from the effective date. In order to allow parties to include those new fall-backs into existing (legacy) derivatives, ISDA has published a Protocol which will allow parties to amend multiple contracts efficiently and safely. In common with ISDA's usual protocol framework, adherence to the Protocol is voluntary and will only incorporate the fall-backs into parties' contracts when both parties to that contract have adhered to it; contracts will remain unamended where one or neither party has adhered. Parties will be able to adhere at any time from the launch date of 23 October 2020 but market participants are being actively encouraged to adhere as soon as possible.

The scope of the Protocol is very wide. Accordingly, and in a welcome move, adherence to the Protocol will amend a wider range of parties' documents including a broad range of ISDA master agreements, a variety of ISDA credit support documents, any confirmations governed by an in scope ISDA master agreement as well as a number of non-ISDA master agreements (such as the Global Master Repurchase Agreement and the Global Master Securities Lending Agreement).

The triggers in the Protocol for the LIBOR rate to cease and the fall-backs to apply instead have been subject to extensive consultation. Ultimately, the Protocol contains both cessation and pre-cessation triggers. Accordingly, the fall-backs will apply if either of the following take place:

- the relevant LIBOR rate ceases to be published (the "cessation trigger"); or
- the relevant regulator of the benchmark administrator announces that the LIBOR rate has ceased (or will at some specified future date cease) to be representative (the "pre-cessation trigger").

The inclusion of a pre-cessation trigger provides the ability for the regulators to address a scenario where, at the end of 2021, LIBOR rates continue to be published notwithstanding that the number of submitting banks falls below the current level. The pre-cessation trigger would allow the FCA, for example, to make an announcement of unrepresentativeness and trigger the fall-backs. It also gives rise to the possibility that, at some point prior to the end of 2021, the FCA will be sufficiently confident about LIBOR's unrepresentativeness after 2021 that it will be able to announce in advance that from the end of 2021, the fall-backs will be triggered. This latter scenario would provide market participants with greater certainty than they currently have about timing.

Whilst the Protocol provides an efficient mechanism for parties to amend their legacy contracts to include fall-backs which have achieved a large degree of market consensus in terms of their operation and economics, issues remain. The spread adjustment, for instance, is unlikely to mitigate precisely the value transfer which will occur upon the fall-backs being triggered. Moreover, there are a number of product types (such as more bespoke, structured derivatives, cross-currency swaps and swaptions) where the fall-backs in the Protocol are potentially problematic, and other contracts which may not permit amendments to the rates to be made. Finally, the nature of the derivatives market means that there will be many contracts which are linked to, or hedge, products in other markets where different fall-back mechanisms are available or may be pursued. In order to mitigate the potential for basis risk, it may be that such linked derivative contracts will need to be amended in ways other than through the Protocol.

Whilst the Protocol mechanism allows specified contracts to be excluded from its operation, there will then need to be an alternative approach to amending these contracts. ISDA have produced some bilateral templates which will assist with this process but it will certainly add complexity to the transition effort and potentially place certain derivative products into the category of "tough legacy contracts".

The loan market

In September 2019, the LMA published Exposure Drafts of the investment grade facility agreements for the adoption of compounded RFRs in new single currency facilities in sterling and US dollars. These drafts were intended to draw comments from market participants and to "facilitate awareness of the issues involved in structuring syndicated loans referencing compounded SONIA, SOFR or other RFRs and the development of an approach to these issues by market participants"[5], and they have been used as the basis for documentation in a handful of "first mover" transactions.

There have been a number of operational challenges and other hurdles in relation to achieving market consensus around the terms of conversion from backward-looking, overnight RFRs into a rate that can be more easily used in the syndicated loans market. The RFRWG recommends that facilities entered into after the end of Q3 2020 contain pre-agreed conversion terms (or a process for agreeing that conversion, to take place before the end of 2021). Accordingly, the LMA produced in August this year an updated draft of its replacement of screen rate clause, which is intended to satisfy this requirement in terms of setting a fixed date to begin, and potentially some agreed terms for, the conversion process. Moreover, following the publication by the RFRWG of recommended conventions for the use of RFRs in loans, it then published (in early September 2020) an exposure draft of multicurrency investment grade facility agreement which contemplates a switch from LIBOR to RFRs at a particular point in time.

Whilst the derivatives market is familiar with, and has issued products linked to, overnight rates, to date term rates have better suited the needs of the cash markets where clarity of future cash flows is of great importance. The syndicated loans market, for example, is predicated on forward-looking term reference rates (usually one, three or six-month LIBOR) being used to calculate floating rate interest (when added to a margin) in advance. This allows borrowers to know at the start of an interest period what interest payment they will need to make at the end of the interest period and plan their cash flows accordingly. Loan documents in their current form work on this basis.

Accordingly, some loan market participants had been exploring the possibility of term RFRs developing which could smooth the replacement of term LIBOR rates. However, such rates have not yet been developed, and while work is on-going the clear message from the regulators has been that market participants should not delay their transition to the alternative reference in the hope that term rates develop and should instead focus on adapting those RFR rates which are available today for use in the loans market. The publication by the RFRWG of suggested conventions for the use of compounded average RFRs in the syndicated loans market is helpful and has been reflected in the LMA exposure draft rate switch facility agreement. However some points do remain to be agreed by market participants.

---

[5] LMA, "The LMA publishes exposure drafts of compounded risk-free rate facility agreements for sterling and US dollars" (23 September 2019), available at https://www.lma.eu.com/news-publications/press-releases?id=170.

The calculation of the rate, using a compounded in arrears RFR for the relevant currency to produce a daily rate, is set out in detail in the LMA documents. The expectation is that in time a third party will provide a “golden source” rate, so that the extensive calculations can be verified by borrowers and, ultimately, dispensed with in favour of reliance on the “golden source” rate. There is not yet any source of this rate in the loans market (and central banks have expressed some reluctance to perform this role).

One important commercial question relates to the credit adjustment spread that it is expected will be added to the relevant RFR in order to more closely approximate LIBOR and mitigate value transfer on the switch. There are two different possible approaches to this: the approach in the derivatives market of a 5 year average historic look back at the difference between LIBOR and the relevant RFR (which provides a slow-moving average that will become fixed on actual cessation of LIBOR), or an approach based on the forward market by means of linear interpolation. The actual number can be fixed on signing for each currency and interest period, or calculated by means of a formula which allows it to change over time and again become fixed on cessation, which may be a cumbersome solution. Different approaches may be desirable for the fallbacks on LIBOR cessation or pre-cessation, and for early opt-in transition post-switch but before formal announcement of LIBOR cessation.

The use of an observation shift, where the compounded rate is calculated and weighted by reference to the days in the observation period rather than the relevant interest period (versus a lag, where each RFR rate is weighted according to the number of days that apply in the actual interest period) in terms of determining the time period for which the compounded rate is calculated is still open for debate, and varies between markets. The derivatives market (and the Bank of England SONIA index) have adopted an observation shift approach, but the operational systems required for a lag approach are seen as simpler, so this approach is currently favoured by the sterling Working Group for loans. There is therefore potential for a mismatch between a loan and its hedging arrangements if different approaches are taken.

The length of the lookback or lag can be varied, depending on the notice required for the amount of accrued interest, but 5 banking days is the suggested starting point. This would be the maximum length of notice of the amount of interest to be paid at the end of the relevant interest period.

The possibility of negative interest rates brings into sharper focus reference rate floors, and the RFR switch agreement assumes that, to the extent a zero floor is agreed, it is the RFR plus credit adjustment spread that is floored, mirroring the approach to LIBOR and EURIBOR and consistent with a switch from LIBOR to the RFRs.

While it seems counter-intuitive to consider fallbacks to the RFRs, which would only come into play if the RFRs themselves are discontinued, given the issues with fallbacks to LIBOR in existing documents the fallbacks to the RFRs are likely to come under scrutiny in this period of market development where screen rates are being developed. The primary fallbacks post-switch are to central bank rates for each currency, and a spread adjustment may also be applied. One open question is whether an ultimate fallback to cost of funds is appropriate, though a pragmatic approach could be taken given the interim fallbacks to central bank rates.

Certain features of LIBOR-based loans appear less relevant to RFR-based loans, though market practice continues to evolve. For example, for a backward looking rate there is much less justification for the imposition of break costs as currently constructed and it is debatable whether market disruption provisions as currently drafted remain appropriate (and in particular whether tying them to lenders' costs of funds).

There are differences in approach between the sterling RFRWG and the ARRC, which may lead to some amendment to the way in which SOFR is used in loans in the coming months, as the approaches align.

The expectation is that many loans will begin to use the switch mechanism in the final quarter of 2020 and into 2021.

However there remain the huge volume of legacy deals to be amended. Because of the nature of loan syndicates, and the absence of a multi-lateral amendment tool such as ISDA uses, each individual loan agreement will need to be amended bilaterally.

The LMA has produced a draft legacy transaction rate switch agreement to facilitate the transition where a large syndicate is involved, which the requisite percentage of lenders (usually the majority lenders) and company must sign. It is based on the same idea as the secondary trading documents: the intention is to streamline the amendment process by using the same form of agreement across transactions though a separate amendment agreement will also be required, so, unless there is a very large syndicate there may be little point in using this two-step process.

The LMA legacy transaction rate switch agreement sets out the replacement reference rate (RFR) and the commercial terms to be changed as a consequence of that replacement and authorises the Agent and Borrower to agree the drafting of the actual amendments to the underlying legacy facility agreement, which would be documented in a separate amendment agreement in the usual way. The

discretion given to the agent in the current exposure draft is limited, and the amendments must incorporate terms which are substantially similar to, and consistent with, those set out in the relevant LMA recommended form of RFR facility agreement (so can only be used once the RFR facility agreement terms are settled) otherwise the consent of the requisite percentage of lenders to the actual amendments would be required in the usual way.

In many cases this dual step process may well be avoidable, and a single amendment process used. The LMA does not propose to produce an actual amendment agreement: the complexity of the drafting means that amending and restating the facility agreement (into which the new RFR provisions will be incorporated) is likely to be the preferred route for ease of use going forward.

Of course the prospect of an amendment process raises the spectre of costs, and who should bear those. And the lenders' approach to the accoutrements of amendments, such as legal opinions and confirmations of security and guarantees will also likely feature in these amendment processes.

There are also a number of markets where the movement to RFRs is more difficult, such as deals with emerging market counterparties, and trade finance which is not well suited to the current calculation methodology of using the RFRs.

Various options have been explored[6], including the role which fixed rates or central bank base rates may have to play in providing an acceptable solution, although it may be that further work will be needed to analyse the historical difference between the base rate and LIBOR for parties to be comfortable agreeing to amendments which use the base rates (plus a spread adjustment) as a fall-back. However, there remains considerable uncertainty as to how these products can be successfully transitioned in the absence of forward-looking term RFRs being developed. Accordingly, there continues to be focus on such rates at the key working groups. Whichever rates are selected for these products, careful consideration will need to be given to the ability to effectively hedge such rates.

The bond markets

All new sterling bond issues in the form of floating rate notes (**FRNs**) and most securitisations have for some time been referencing SONIA rather than LIBOR. As new issues in the bond market are now referencing SONIA rather than LIBOR, fall-backs from LIBOR to SONIA are no longer needed in new bond contracts. Likewise, significant volumes of SOFR linked bonds have been issued in the US$ market in the past year, where the publication in March 2020 of SOFR averages and the SOFR index was seen as a key step in the transition to RFRs. This approach for new deals has principally been driven by concerns about the difficulty and expense of carrying out amendment processes for bonds given the large and often disparate population of noteholders and the wish to avoid increasing the universe of deals for which such a process is necessary.

The market convention for interest calculation on new SONIA floating rate notes is still being bedded down. Until January 2020, all new SONIA bond issuance used the same market conventions: overnight SONIA compounded in arrears over the interest period with a five-day lag, and with the margin added. However, in February 2020, the European Bank for Reconstruction and Development issued the first new SONIA issue based on the "shift" approach. Whereas the lag method calculates interest according to the number and weighting of days in the *interest* period, the shift method calculates interest according to the number and weighting of days in the *observation* period.

However, significant challenges remain in relation to legacy bonds. The latest estimates of legacy sterling LIBOR bonds maturing after the end of 2021 are of the order of 315 FRNs and 170 securitisations, with 560 tranches and a total notional of around £110 billion[7]. Whilst there are examples of bond issuances that have successfully transitioned to alternative replacement rates, these have not necessarily been representative of outstanding bonds across the market.

It is likely, therefore, that a large number of consent solicitation processes to introduce amendments to the terms and conditions of bonds will need to be carried out between now and the end of 2021. However, consent solicitations are widely regarded by the market as time consuming and costly. Each bond, or series of bonds, will have their own terms and conditions which will need individual consideration. Whilst there has been publication of lessons learnt from transitioned bonds that have occurred[8], market precedents can only provide so much assistance. For this reason, the RFRWG has recently published a paper[9] calling on issuers to commence client solicitation programmes as soon as possible, rather than wait until closer to the end of 2021, so that logistical challenges with investor engagement and

[6] For instance, this LMA paper notes that "In terms of SOFR (the U.S. dollar RFR), JP Morgan completed a bilateral SOFR loan and Bank of China provided a 90-day bilateral trade finance loan using a 30 day simple historical average of SOFR applied on a forward basis (given the tenor but also the nature of trade finance deals)".

[7] RBC Capital Markets (October 2018).

[8] https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/lessons-learned-from-recent-conversations-of-legacy-libor-contracts.pdf?la=en&hash=F7369B04468DEE1B54CE4C2B42F2D0DC1D0E06B1.

[9] https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/rfr/active-transition-of-gbp-libor-bonds.pdf.

legal and other support required do not impede successful transition.

In addition, there are a number of issues which issuers will need to be aware of. First, it will of course be important to consider the interaction between the amendments proposed in the client solicitation process and any hedging arrangements which are in place. Second, care will need to be taken that the amendments are not sufficiently material that the issuance constitutes a “new transaction”, rather than merely an amended transaction. Being a new transaction could have unintended consequences of triggering regulatory issues relating to the loss of grandfathering provisions in capital treatment and other provisions.

Third, it may not always be possible to obtain the requisite consent from bondholders, particularly in the case of bonds with high consent thresholds. In the UK, the typical threshold is 75%. However, FRNs which are subject to US securities law will commonly require unanimous consent for a change in the terms and conditions of the notes. Accordingly, the US authorities are not actively encouraging transition of such bonds to RFRs and instead it is thought likely that the ARRC’s legislative proposal will be important.

Impact of COVID-19

Despite recognising the challenges posed by COVID-19, regulators have remained firm in their view that, when it comes to LIBOR transition, the show must go on.

The key regulators have been consistent in their comments on the question of relief from the current timetable. For example, in a joint statement on 25 March 2020, the FCA, the BoE and the RFRWG announced that, despite the impact of COVID-19, there had been no changes to the "central assumption" that, after the end of 2021, firms could not continue to rely on LIBOR[10]. Although the joint statement acknowledged some interim transition milestones may be affected by COVID-19, LIBOR transition was characterised as an "essential task" to support the global financial system.

It is therefore clear that the intention of the regulators is to press on with LIBOR transition, albeit with some degree of acknowledgment of the challenges posed by the ongoing global pandemic and the impact that this will have on some of the milestones which they and the key working groups (principally the ARRC and the RFRWG) have laid out as best practice.

For example, the RFRWG has recommended the following interim deadlines for loans:

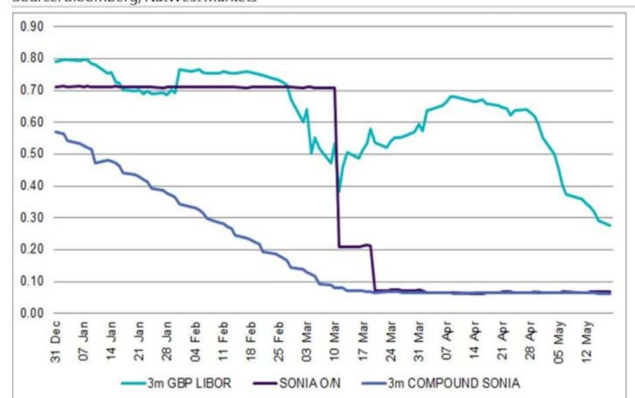
- lenders should have been in a position to offer non-LIBOR linked products to their customers by the end of Q3 2020;
- borrowers should include clear contractual arrangements (eg pre-agreed conversion terms, agreed process for renegotiation) in all new and re-financed LIBOR-referencing loan products after the end of Q3 2020; and
- the cash market should stop issuing LIBOR linked loans (expiring post-2021) by the end of Q1 2021.

One of the reasons for the regulators' unanimous view that the market must continue to work on the basis that LIBOR will cease at the end of 2021 is the impact of COVID-19 on LIBOR and the RFRs. The regulators have noted that the degree to which LIBOR submissions were based on expert judgement, rather than actual transactions, increased during the period of market disruption. Moreover, at the height of the market uncertainty in March and April 2020, there was a clearly observable increase in the spread between LIBOR rates and the RFRs as the credit spread component of LIBOR was amplified (see Figure 3). Accordingly, the regulators have been quick to seize on this as illustrating the importance of LIBOR cessation and the poor outcome for borrowers if they remain paying interest rates that are linked to LIBOR.

Figure 3:

GBP - 3m LIBOR & SONIA

Source: Bloomberg, NatWest Markets



It is also worth noting that an unfortunate by-product of the various business loan schemes introduced on an emergency basis in response to the economic impact of COVID-19 has been a new category of LIBOR-linked loans which will need to be amended to incorporate fall-backs. Whilst many of the loans were made on fixed interest rates, the speed at which the schemes were rolled out allowed banks to issue certain loans on the basis of LIBOR.

[10] https://www.fca.org.uk/news/statements/impact-coronavirus-firms-libor-transition-plans.

Proposed legislative interventions on tough legacy contracts

Throughout the transition process, there has been a recognition that there may be some contracts where it will be very difficult, or even impossible, to achieve the necessary amendments prior to the cessation of LIBOR. These contracts are often referred to as "tough legacy contracts".

Until recently, the regulators have been careful to play down the potential for legislative provisions which are designed to prevent a "cliff-edge" scenario for these tough legacy contracts at the end of 2021. It is likely that this reluctance was driven to a large extent by the concern that it would encourage the industry to ease off its transition efforts. However, the last few months have seen significant developments in this area, as the level of concern about the risks of the cliff-edge grow.

US proposals for a legislative fix

In March 2020, the ARRC in the US was first to move on this when it published a proposal for New York state legislation to assist the transition of New York law financial contracts away from USD LIBOR[11]. The central pillars of the proposed legislative fix include:

- Any contracts which do not contain fall-back language or which fall back to a LIBOR-linked rate will automatically transition from LIBOR to the "recommended benchmark replacement". This replacement rate will be chosen by the US regulators (ie will be an adjusted version of SOFR) plus a spread adjustment to avoid the transfer of value, the method for which will also be selected by the US regulators.
- Where a contract gives a party the right to exercise a contractual discretion regarding the fall-back, that party will be able to elect to transition to the "recommended benchmark replacement" and will be protected from any civil liability for damages arising from exercising that option by a safe harbour.
- Any legacy language which includes a fall-back to polling for LIBOR or other interbank funding rate will effectively be ignored.

The most obvious difficulty with the proposed legislative solution is that it is a blunt instrument which will change, automatically, the interest rate payable under the contract to the "replacement benchmark rate" even if that is not the parties' preference. When this switch takes place, "winners" and "losers" are inevitable. "Losing" parties are likely to pursue civil claims against their counterparties, if necessary looking for loopholes in the safe harbours provided for in the legislation. They may also seek to challenge the legislation itself by relying upon either the Contract Clause or Due Process provisions of the US Constitution, which limit the state's power to interfere with private contracts. Certain provisions that retroactively affect the terms of existing contracts could be struck down if New York state or federal courts determine that they violate the US Constitution[12].

A further risk for market participants is that an amendment made under the legislation may also create mismatches between different parts of their portfolios, disruption of hedges and unanticipated delta risk in pricing models as the legislation envisages that the spread adjustment may be different depending on the type of product[13].

UK's proposed legislative fix

The ARRC's equivalent in the UK, the RFRWG, published a paper on "tough legacy contracts" in May 2020[14] which considered the need for a legislative fix. In it, the RFRWG concluded that there were a number of products for which there was a "case for action" for a legislative solution.

The UK Government has responded to this by announcing its intention to introduce a legislative solution for the transition of tough legacy contracts[15] via the forthcoming Financial Services Bill. This provision will ensure that, by end-2021, the FCA has the appropriate regulatory powers to automatically transition tough legacy contracts away from LIBOR[16]. It will do so by extending the circumstances in which the FCA may require an administrator to change the

---

11 Proposed Legislative Solution to Minimize Legal Uncertainty and Adverse Economic Impact Associated with LIBOR Transition (see the ARRC press release).

12 The likelihood of success or failure of such a challenge to the proposed legislation would depend on a number of factors outlined in our blogpost LIBOR Transition: Is ARRC's Proposed Legislative Fix Constitutional?.

13 For further details, please see our blog post: LIBOR transition: What does the US regulator's proposed legislative fix mean for UK financial markets?.

14 https://www.bankofengland.co.uk/-/media/boe/files/markets/benchmarks/paper-on-the-identification-of-tough-legacy-issues.pdf.

15 For further details, please see our blog post: UK Government announces LIBOR legislative fix: summary of proposals and our initial observations.

16 For further details, please see our blog post: UK Tough Legacy Taskforce recommends LIBOR legislative fix: key risks and next steps.

methodology of a critical benchmark (eg LIBOR) and clarify the purpose for which the FCA may exercise this power.

The UK solution means that there will be no direct amendment to the tough legacy contracts; rather, those contracts which are in scope will continue to reference LIBOR. However, instead of those references incorporating a rate which uses the current methodology for LIBOR, a new methodology – a synthetic or "legislative LIBOR" – will apply. The new methodology will bear no resemblance to the current process of panel bank submissions based on the (theoretical) rate at which banks lend to one another in the interbank unsecured funding market. It will therefore be LIBOR in name only.

This is in many ways an elegant solution, because it means the inadequate legacy fall-back mechanisms that would be engaged upon the permanent cessation of LIBOR will not kick in unless and until legislative LIBOR ends. However, care will be needed in the precise mechanics of the powers to ensure that contracts that have been actively amended by the parties to include more robust fall-backs are not caught. Such contracts could switch to legislative LIBOR, rather than the new fall-back which the parties have chosen, if they fall within the scope of the proposed legislation.

The proposed legislative solution itself may give rise to a number of litigation risks. The most obvious impact of the proposed legislative solution is that it will automatically change the interest rate payable under the contract when the methodology for calculation of LIBOR changes, to a rate that is currently uncertain (and will remain for some time).

The change in interest payable will be immediate and obvious and this will provide fertile ground for disputes; it is again a blunt tool and unlikely to represent the bargain which the parties would have struck had they been able to/chosen to. In particular, there will be mis-selling risks in relation to both the original product referencing LIBOR, but also for contracts actively amended to switch from LIBOR (for example, if they would have been better off under legislative LIBOR). It remains to be seen how the scope of the solution will be defined (ie what will count as "tough legacy") and disputes may arise as to whether contracts fall within or outside that scope.

Other risks include creating mismatches between different parts of a portfolio, where some products move to legislative LIBOR but others are amended via bilateral agreement or (for example, in the case of hedging products) the ISDA Protocol.

There is a further risk of public or private law claims on the basis that continued publication of legislative LIBOR breaches the requirements of the Benchmarks Regulation 2016/1011 (**EU BMR**) (as amended by the Benchmarks (Amendment) (EU Exit) Regulations 2018) (**UK BMR**). Finally, regulators have been at pains to point out that parties cannot assume that it will in fact be possible to produce a legislative LIBOR, or what form that legislative LIBOR will take.

EU's proposed legislative fix

The European Commission (**Commission**) has also announced proposals for an EU legislative solution for the transition of legacy LIBOR contracts[17].

The Commission's chosen mechanism for introducing a legislative fall-back for LIBOR is to amend the EU BMR to enable the Commission to select replacement benchmarks for LIBOR rates (or any other widely used reference rates), where the relevant benchmarks cease.

The key elements of the proposed amendments to the EU BMR are as follows:

- The statutory successor to LIBOR is to be decided by the Commission.
- In selecting the statutory successors to LIBOR rates, the Commission will "take into account" recommendations made by the ARRC and RFRWG, but has not expressly stated it will follow them; divergence is therefore entirely possible.
- The statutory replacement rates will become applicable upon the occurrence of certain trigger events, including a statement of non-representativeness from the regulator with responsibility for the benchmark administrator (eg the FCA in the case of sterling LIBOR).
- The draft legislation appears intended to apply to all contracts referencing a benchmark in cessation where one or both of the parties are EU supervised entities and where there is no, or no suitable, fall-back provision (ie whether or not that contract is governed by EU law).

Consistent with the US and UK legislative solutions, the inherent risk of the proposed EU fix is that it is a blunt tool, which will automatically change the interest rate payable under the contract. The choice of replacement rate remains uncertain but is unlikely to represent the bargain the parties would have struck if they had amended.

There is therefore the same risk of "winners" and "losers" when the interest rate payable changes overnight, bringing with it the risk of claims and creating portfolio mismatches. As with the UK and US approaches, that rate will be determined at some, unspecified, point in the future. This makes it very difficult for firms to assess the extent of the risk that

[17] For further details, please see our blog post: Legislating for LIBOR transition: UK/EU jurisdictional battle or complementary regimes?

falling back to any of the statutory successor rates entails.

A further difficulty arises for banks as a result of the proposals given the risk of divergent approaches being taken to the successor rates under the various legislative fixes. The proposals raise some interesting (and complicated) challenges from a conflict of laws perspective, to which no obvious answer is offered by the proposals themselves. This is primarily because of the apparent scope of application of the EU's proposal, which on the face of it would appear to envisage the EU's successor rate applying to legacy English (or other non-EU) law contracts to which an EU-supervised firm is a party, rather than the UK/US regulators' successor rate - even if the other counterparty is regulated by a UK or US regulator and the relevant contract is subject to English or New York law. This may not ultimately matter as a matter of substance if the successor rates adopted by the EU and other jurisdictions are consistent. However, that critical point has not yet been resolved, and so raises a further litigation risk.

Figure 4: Comparison of legislative fixes in the UK, US and EU

	UK	US	EU
Legislation amended	UK BMR	New primary legislation under New York law	EU BMR
Non-representativeness trigger	Yes	Yes	Yes
Amendment mechanism	FCA has power to change methodology of a critical benchmark	Automatic transition from LIBOR to "recommended benchmark replacement" upon activation of trigger	Automatic transition from LIBOR to "recommended benchmark replacement" upon activation of trigger
Scope of legacy contracts affected	Only "tough legacy" contracts, but not yet clear how this will be defined	All legacy contracts meeting set criteria (eg no fall-back provisions)	All legacy contracts meeting set criteria (eg no, or no suitable, fall-back provisions)
Replacement rate	TBC by the FCA	TBC by the ARRC	TBC by the Commission
Safe harbour (from litigation for using the recommended benchmark replacement)	No	Yes	Yes

Litigation and regulatory risks

LIBOR cessation will have a profound impact on the financial services industry. It is inevitable that institutions will face litigation and regulatory risks as a result of the transition. It is important that those risks are understood so that careful steps can be taken to mitigating those risks during the transition process.

The FCA has provided market participants with some high level guidance on the types of conduct risk which are associated with the transition from LIBOR to RFRs[18]. In our view, the key litigation and regulatory risks which arise can be categorised into three key areas:

1. **Contractual continuity –** many legacy contracts which include references to LIBOR do not contain robust existing fall-backs. In some instances, those fall-backs are commercially unattractive – for example where the operation of a fall-back to the last available LIBOR rate that was published effectively converts a floating rate to a fixed rate. However, in other instances the fall-back will be unworkable or the implementation of the fall-back itself may give rise to disputes.

   This may lead to arguments about the ability of the court to interpret contracts in a way which avoids a commercially unattractive or unworkable result, to imply terms into the contract which do so or which allow the courts to step in and perform the contractual mechanism. However, in the absence of such contractual mechanisms, the prospect of arguments being raised that contracts will be frustrated, or that force majeure clauses are engaged, is very real.

2. **Mis-selling risks –** the risks of litigation or conduct issues arising as a result of LIBOR cessation are clear both in respect of (i) the continued sale or distribution of LIBOR-linked products; and (ii) the transition of LIBOR-linked products to RFRs.

   In relation to (i), as well as increasing the population of contracts in respect of which issues of contractual continuity may arise, there is also a significant risk that borrowers are exposed to increased interest rate costs as a result of the reference rates continuing to be LIBOR (as illustrated at the outset of the COVID-19 turbulence).

   In relation to (ii), whilst it is likely that a spread adjustment will be added to the margin to seek to mitigate the value transfer that would otherwise occur upon transition to the relevant RFR, it is inevitable that an adjustment made on the basis of historic movements will not fully or precisely represent the difference between the two rates in the future, resulting in a “winner” and “loser” on each transition and a potential incentive for claims or conduct investigations. Moreover, firms will want to take great care in their descriptions of the RFRs to avoid allegations that they have misled customers into believing that they are less volatile or risky than they in fact turn out to be, or that they have not adequately explained the (complex) mechanics of the adjusted RFRs and the spread adjustments.

   In addition, differences in the fall-backs for different product markets will likely create basis risk for customers who hold portfolios of products. This is because there are likely to be differences across different product markets in both the economic effect of fall-backs and in the timing of their triggers. This will be particularly acute where one or more of their products are intended to hedge other products impacted by the transition.

   The uncertainty around the legislative fall-backs also creates risks for firms given the inability to understand the economic consequences of failing to amend legacy contracts.

3. **Governance and applicable senior manager regimes –** the complexity of the transition process, and the inherent risk that it poses both to financial services firms and their customers, means that regulatory scrutiny is likely to be high. Firms are on notice that they are expected to have carefully designed and well-resourced project plans to manage the transition of their contracts. Accordingly, robust and clear governance arrangements for the programme, likely with specific internal project teams subject to senior management oversight and with external resource and expertise where appropriate, will be critical.

   In particular, those institutions who operate in jurisdictions that have a senior management accountability regime (such as the Senior Management Certification Regime in the UK, the Bank Executive Accountability Regime in Australia and Hong Kong’s Manager-in-Charge and Registered Institutions Senior Manager Accountability Regimes) will need to ensure that they have effective processes in place to

[18] https://www.fca.org.uk/markets/libor/conduct-risk-during-libor-transition.

discharge the obligations of their senior managers under those regimes.

Next steps for financial services firms

A number of prudential and conduct regulators around the world have conducted Dear CEO letter exercises in order to understand the transition plans of the financial institutions which they supervise, including the UK[19] and Australia[20].

In the UK, the FCA's public summary of the responses received, identified some common themes in relation to actions that firms should be taking:

- Planning and managing risks on the basis of LIBOR discontinuation at the end of 2021, rather than assuming that it will continue in some form thereafter.
- Demonstrating a good understanding of and involvement in relevant industry initiatives.
- Proactively transacting using new RFRs or taking steps to incorporate robust fall-back language.
- Quantification of LIBOR exposures using a range of quantitative and qualitative tools and metrics, keeping the metrics up to date.
- Identifying reliance on and use of LIBOR beyond a firm's balance sheet exposure and assessing (for example) whether LIBOR is present in the pricing, valuation, risk management and booking infrastructure firms use.
- Developing a project plan for transition with sufficient granularity of detail, including key milestones and deadlines to ensure delivery by end-2021.
- Nominating a senior executive covered by the Senior Manager Regime as the responsible executive for transition, with clarity on the senior manager's role in transition work.
- Carrying out a detailed prudential risk assessment (subject to appropriate review and challenge), taking a broad view and considering all risks that could be relevant to a firm's operations. Aligning identified risks with appropriate mitigating actions. This includes considering whether any LIBOR-related risks are best addressed within existing conduct risk frameworks or need a separate, dedicated program.
- Identifying a range of conduct risks, including management of potential asymmetries of information and the potential for conflicts of interest, when forming and reviewing transition plans. Again, aligning identified risks with appropriate mitigating actions.

In Australia, the Australian Securities and Investments Commission (**ASIC**) and the Australian Prudential Regulation Authority (**APRA**) identified best practice transition measures that broadly align with those set out by the FCA, including communicating clearly and effectively with customers; developing a detailed transition program plan; conducting rigorous risk assessment in relation to various aspects of the transition; and conducting LIBOR transition training for stakeholders, with a focus on client-facing staff.

The Australian summary observed that respondents were conscious of how external dependencies (eg the outcome of industry consultations, the work of various international working groups) would impact the success of the transition. ASIC and APRA encouraged respondents to participate in industry forums, stay informed of market developments, and adopt recommendations such as those published by ISDA[21].

We anticipate that regulators in other jurisdictions are, and will continue to be, following similar principles in their supervisory activities. This is particularly so since the recent publication of a report by the FSB[22] which highlighted significant variation across regulators in different jurisdictions and encouraged those who were behind in their efforts to take action to catch up. Accordingly, firms around the globe should be actively monitoring market developments, progressing their preparations with a view to commencing the necessary amendment strategies promptly and expecting to keep their regulators regularly appraised on their progress.

[19] Financial Conduct Authority, "Feedback on the Dear CEO letter on LIBOR transition" (June 2019), available at https://www.fca.org.uk/publication/feedback/feedback-on-dear-ceo-letter-on-libor-transition.pdf.

[20] Australian Securities and Investments Commission, "Preparation for LIBOR transition: 'Dear CEO' letter feedback'" (April 2020), available at https://download.asic.gov.au/media/5551249/benchmark-rate-reform-asic-letter-feedback.pdf.

[21] Australian Securities and Investments Commission, "Preparation for LIBOR transition: 'Dear CEO' letter feedback'".

[22] https://www.fsb.org/wp-content/uploads/P090720.pdf.

Contact directory

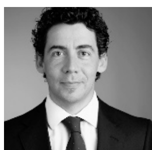
Co-heads of Global LIBOR Cessation Team

Harry Edwards
Partner, Disputes
Melbourne
T +61 3 9288 1821
M +61 448 072 588
harry.edwards@hsf.com

Nick May
Partner, Finance
London
T +44 20 7466 2617
M +44 7730 092 227
nick.may@hsf.com

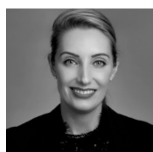
Disputes

Hannah Cassidy
Partner, Disputes
Hong Kong
T +852 21014133
M +852 63923519
hannah.cassidy@hsf.com



Rupert Lewis
Partner, Disputes
London
T +44 20 7466 2517
M +44 780 9200377
rupert.lewis@hsf.com

Jenny Stainsby
Partner, Disputes
London
T +44 20 7466 2995
M +44 7766 775 129
jenny.stainsby@hsf.com



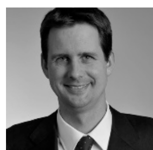
Natalie Curtis
Partner, Disputes
Singapore
T +65 68689805
M +65 91385944
natalie.curtis@hsf.com

John O'Donnell
Partner, Disputes
New York
T +1 917 542 7809
M +1 917 699 9036
john.odonnell@hsf.com

Peter Behmke
Partner, Disputes
New York
T +1 917 542 7611
M +1 646 703 1934
peter.behmke@hsf.com

Ceri Morgan
Professional Support Consultant
London
T +44 20 7466 2948
M +44 7809200451
ceri.morgan@hsf.com

Finance

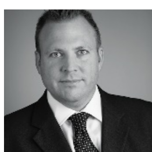


Will Nevin
Partner, Finance
London
T +44 20 7466 2199
M +44 7810 378 622
will.nevin@hsf.com

William Breeze
Partner, Finance
London
T +44 20 7466 2263
M +44 7515 783198
william.breeze@hsf.com

Simon Chadney
Partner, Finance
London
T +44 20 7466 2993
M +44 771 7760048
simon.chadney@hsf.com

Edward Dougherty
Partner, Finance
New York
T +1 917 542 7806
M +1 646 965 0731
edward.dougherty@hsf.com



Kristen Roberts
Partner, Finance
London
T +44 20 7466 2807
M +44 7851 382 885
kristen.roberts@hsf.com

Patrick Lowden
Partner, Finance
Sydney
T +61 2 9225 5647
M +61 405 150 647
patrick.lowden@hsf.com

Alex Aitken
Partner, Finance
Hong Kong
T +852 21014019
M +852 90931946
alexander.aitken@hsf.com

Soumya Rao
Of Counsel, Finance
London
T +44 20 7466 2991
M +44 7595 967 326
soumya.rao@HSF.com

Ed Baring
Managing Partner
South Africa
T +27 10 500 2630
M +27 82 384 9879
edward.baring@hsf.com

Minolee Shah
Professional Support Lawyer
London
T +44 20 7466 2074
M +44 7912 394 326
minolee.shah@hsf.com

Emily Barry
Professional Support Lawyer
London
T +44 20 7466 2546
M +44 791239 4311
emily.barry@hsf.com

Alternative Legal Services (ALT)

Melanie Ryan
Head of Client and Technology Solutions, ALT
Brisbane
T +61 7 3258 6495
M +61 405 100 126
melanie.ryan@hsf.com

Federica Marra
Head of Finance, ALT
London
T +44 28 9025 8297
M +44 7718 696 069
federica.marra@hsf.com

Warrick Louey
Head of Corporate, ALT,
Melbourne
T +61 3 9277 2743
M +61 435 384 282
warrick.louey@hsf.com

For a full list of our global offices visit **HERBERTSMITHFREEHILLS.COM**

© Herbert Smith Freehills 2020 SPB207354/