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LIBOR Transition - Legislative Solutions

FIA Conference
LIBOR: Where Are We and Where Are We Going?
April 28-29, 2021

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Overview of Proposed Legislative Measures

Targeting “tough legacy” contracts

Potential legislative solutions in UK and US, as well as published legislation in the EU and NY

– UK proposals remain moving targets
– NY solution is law; US federal solution likely
– UK goes to source
– US and EU change contract terms
– Mapping the differences
– Safe harbors

Others?

Mapping Differences Based on Current Proposals

Proposal	US (NY)	EU (Regulation (EU) 2021/168 of the European Parliament and of the Council amending Regulation (EU) 2016/1011(EU BMR), dated February 10, 2021 (and effective from February 13, 2021)	UK (Financial Services Bill)
Scope	USD LIBOR only. All NY law contracts with no fallbacks or fallbacks to LIBOR-based rates (e.g. last quoted LIBOR/dealer polls). Fallbacks to a non-LIBOR replacement rate excluded. Specifically many loans will be effectively excluded to the extent that they fallback to prime rate. Parties may opt out by mutual agreement, before or after the occurrence of the trigger event.	Potentially all LIBORs. Contracts a) without fallbacks b) no suitable fallbacks (fallbacks deemed unsuitable if: (i) don't cover permanent cessation; (ii) their application requires further consent from third parties that has been denied; or (iii) its application no longer, or only with a significant difference, reflects the underlying market or economic reality and could have an adverse impact on financial stability. N.B. various conditions for (iii). Either: a) governed by an EU law; or b) governed by the law of a third country and only between parties established in the EU and third country law does not provide for an "orderly wind down" of a benchmark. Parties may opt out by mutual agreement, before or after the occurrence of the trigger event.	Currently expected to be certain tenors of GBP, JPY, and USD LIBOR (subject to further consultation). All contracts which reference the relevant LIBOR. FCA discretion to effect LIBOR methodology changes as it appears on screen page. Widest extra-territorial impact (but may be trumped by the contractual fallbacks or the US/EU legislation to the extent of their territorial reach). FCA power to prohibit use in certain contracts by UK supervised entities. Also, limitations on contract scope for this prohibition due to existing limitations on the scope of UK BMR. This may change. FCA power to exempt defined classes of "tough legacy" contracts from the prohibition. FCA have indicated they consider 'tough legacy' to constitute contracts that genuinely have no realistic ability to be renegotiated or amended to transition to an alternative benchmark. FCA have indicated that they intend to consult in Q2 2021 on the precise scope.
How does it work	Mandating a statutory rate in the legacy contract via legislation.	Mandating a statutory rate in the legacy contract via legislation.	FCA authority to change LIBOR methodology so existing LIBOR rate on screen page is a new rate – so a "synthetic LIBOR" (for the relevant tenors and currencies) continues to exist (and screen page continues to be referenced by contracts globally).

Mapping Differences Based on Current Proposals (cont'd)

Proposal	US (NY)	EU (Regulation (EU) 2021/168 of the European Parliament and of the Council amending Regulation (EU) 2016/1011(EU BMR), dated February 10, 2021 (and effective from February 13, 2021)	UK (Financial Services Bill)
Who determines the new rate, what might it be for any product	Fed, NY Fed or ARRC's recommended fallback rate and spread at the time. Not likely to be same rate for all products.	Commission to determine the rate. Commission will take into account, where available, recommendations of central bank or RFR WGs. Proposal refers to the designation of "one or more replacement benchmarks" opening up the possibility of a different rate per product type. [N.B. there are parallel powers for Member States in the Council's position, but not relevant to LIBOR.]	Powers given to FCA as regulator of ICE. FCA must issue Policy Statements. As things stand "One size fits all" for each tenor. Likely to be forward-looking term RFR plus spread if one is capable of being produced.
Litigation risks: – **Safe harbor** – **skip any polling process**	– Yes – there are safe harbors for mandatory override and replacement rate that is recommended fallback chosen by Determining Person. – Statute mandates override if there is a polling process for LIBOR or other interbank funding rate.	Yes informally but not in the wording. Commission indicated to A&O that even if it believes choice of synthetic LIBOR is appropriate it may invoke the replacement rate as a "safe harbour" from litigation. Now supported in a limited way by Recital 13 (which is not a true safe harbor) but not in the text. [N.B. includes drafting errors given Brexit, e.g. reference to "competent authority" which does not cover UK FCA post-Brexit]	Not in current draft text of Financial Services Bill, although HM Treasury recently conducted a consultation on the inclusion of safe harbours intended to ensure contractual continuity where contracts refer instead to "synthetic LIBOR", and a safe harbour from litigation arising out of the switch to "synthetic LIBOR".

NY Legislative Status

01

Passed Senate on March 24th

– Vote: 62 to 1

02

Signed by Governor on April 6th

03

Bill is substantively similar to ARRC Proposal, although there have been some changes to note

04

Effective immediately

UK Financial Services Bill

General scope – conceptual distinction

IMPACT	Supervisory "tough legacy" restriction
Synthetic LIBOR on the screen page will have global reach	Prohibition is supervisory only and limited to UK supervised entities, certain "uses" and only BMR products

Prohibition (and exemption) scope

- UK supervised entities only
- FCA discretion and Policy Statements
- Transactions:
  - If administrator intends to cease providing LIBOR, FCA may prohibit some or all new use under **Article 21A** – i.e tailor by product/ persons involved (e.g. FCA may determine parties can agree a new hedge for an old legacy cash instrument)
  - If LIBOR is a designated **Article 23A** benchmark, then blanket prohibition on "use of a benchmark". FCA may only exempt with respect to some or all legacy use under Article 23C (i.e. FCA's determination of tough legacy).
  - Definitions from onshored BMR with historical interpretation: broadly speaking scope is certain derivatives; certain bonds, certain investment funds; certain consumer credit contracts (not business loans).

UK Financial Services Bill (cont'd)

Prohibition (and exemption) scope (cont'd)

- Dependent on interpretation of EU BMR in past unless FCA gives further direction:
  - There are different interpretations in the market of the scope of the defined term "use of a benchmark". For example, some limbs could be seen as "one shot" only (limb (a) "issuance"; limb (b) "determination of the amount payable"). Limb (b) is particularly unclear for purposes of Article 23A prohibition. A conservative view in the market may be that it is a continuing obligation throughout the life of a contract and captures bonds and derivatives. So the prohibition on use captures almost all legacy. A more bullish view is that use is "one shot" so Article 23A cannot prohibit use in relation to legacy bonds or derivatives. Similarly there are different historic interpretations for "financial instrument" which will affect scope of the prohibition.
  - Under Article 23A, no apparent exemption from blanket prohibition from new use (e.g. for hedging and compression). Intentional given inconsistent with Article 21A?
- Consequences (not validity or enforceability, but can it trigger termination rights?)

"At risk" and impact on triggers, particularly non-anticipatory non-representativeness triggers.

Currently no safe harbors, but market feedback on consultation (closed on March 15th) expected imminently.
May be included in next draft if feedback is positive.

ICE and FCA Consultation Announcements – November 2020

FCA proposed consultations

- FCA refers to the supervisory guidance in relation to limiting all new use of USD LIBOR after end-2021 from the Federal Reserve Board of Governors, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency. Close cooperation.
- On November 30, 2020, the FCA published a statement advising that it plans to consult in Q2 2021 on its proposed policy approach to the use of its proposed new powers (under A.21A UK BMR) to prohibit some or all new use by supervised entities in the UK of a critical benchmark (such as LIBOR currency-tenor settings) where a benchmark administrator has confirmed its intention that the benchmark will cease. FCA have said they would not envisage using A.21A power before end-2021.

ICE and FCA Consultation Announcements – November 2020 (cont'd)

FCA statement, outline, overview of Financial Services Bill (FSB) and two consultations on policy on the use of proposed new powers (November 18, 2020)

- Relates to some of the new powers that would be granted to the FCA, assuming the FSB is passed in its current form.
  - **Article 23A** – the ability, in certain circumstances, for the FCA to designate a critical benchmark as an Article 23A benchmark.
  - **Article 23D** – the ability, in certain circumstances, to require continued publication of critical benchmarks on the basis of a changed methodology.
- Consultations aimed at: (i) administrators; (ii) contributors; and (iii) end users of critical benchmarks, but also invites views from authorities and market participants in relevant overseas jurisdictions. The deadline for responding is January 18, 2021.
- FCA plan to consult in Q2 of 2021 on approach to the exercise of their powers under the proposed Article 21A (as above) and Article 23C.
- FCA has also committed (in line with its obligations under the FSB) to set out their approach in published Statements of Policy at the conclusion of these consultations.

ICE and FCA Consultation Announcements – November 2020 (cont'd)

Article 23A Consultation – policies around whether FCA will designate Article 23A benchmark

- If the FCA makes a non-representativeness announcement (or at risk) in respect of a benchmark, it must consider whether to designate it as an Art.23A benchmark. Designating a critical benchmark as an Article 23A benchmark would result in:
  - General prohibition on use of the benchmark by supervised entities;
  - Powers for the FCA to exempt some or all existing use of the benchmark from this general prohibition; and
  - FCA may impose changes in methodology (i.e. "synthetic LIBOR").
- This is a right not an obligation, and the FCA will have consideration of certain factors when choosing to designate LIBOR as an Art.23A benchmark:
  - Can the representativeness of LIBOR be restored or maintained?
    - Does market or economic reality still exist?
  - Where representativeness could be restored and maintained – are there good reasons to do so?
    - Test is directional – NOT absence of good reasons not to restore
    - Prevent consumer harm and promote market integrity (or would an orderly wind down serve this better?)
    - Market preparedness, including transition progress and whether or not synthetic LIBOR a better solution
    - Sustainability of restored representativeness
    - Impact on ICE, users and panel banks
- Option to designate so also consider whether there are good reasons to designate as an Article 23A benchmark
  - Overlaps with above
  - Useful to signal LIBOR is unrepresentative (cryptic?)
  - Automatic prohibition on UK supervised entity usage (plus exemption powers for legacy) – allow a solution prevent consumer harm and promote market integrity rather than just keep LIBOR alive generally until such time as it can be ceased in orderly fashion
  - Methodology change to LIBOR may prevent market disruption
  - LIBOR can be sustained for long enough to reduce disorderly impact on market or may even in future be representative
  - Can decide not to designate immediately – can re-assess later

ICE and FCA Consultation Announcements – November 2020 (cont'd)

Consultation on Article 23D – policies relating to whether it will change methodology and how

- If the FCA designates LIBOR a critical benchmark, the FCA would have power to impose requirements on the administrator, e.g. to change the way in which the benchmark is determined.
- Provisional view on "**Synthetic LIBOR**" methodology:
  - a forward-looking term RFR based on the overnight RFR already chosen by relevant national working groups for the relevant currency (for example, SONIA for sterling); plus
  - a 5-year historical median of the spread between the relevant IBOR and relevant RFRs (i.e. ISDA methodology – "fairest and most robust way" – note to Conduct WG).
- The FCA may only exercise its powers if:
  - it considers it appropriate to do so having regard to the desirability of securing that the cessation of the benchmark takes place in an orderly fashion; and
  - it considers it desirable to do so in order to advance either or both of the following – (i) its consumer protection objective, and (ii) its integrity objective.
- The FCA will only exercise its powers according to key principles: e.g. tough legacy is significant, whether orderly cessation is possible without methodology, appropriate inputs are available, global impact, level of consumer exposure and financial impact/ fairness of outcomes, impact on market integrity.
- In terms of how it might change methodology – changes are a fair approximation of LIBOR value, least disturbance or disadvantage to affected parties, market support, availability to ICE of robust and transparent inputs, global impact, duration, impact on ICE.

Consultation – 9 or so questions but basically, do you agree with its plans?

ICE and FCA Announcements – March 5, 2021 – Synthetic LIBOR

FCA statement – on use of synthetic LIBOR powers?

	Volume of usage	Contracts can transition	Consumer protection/market integrity	Appropriate inputs
GBP LIBOR	FCA announced that it will consult on requiring IBA to continue to publish 1-month, 3-month and 6-month sterling LIBOR settings for a further period after end-2021 on a changed methodology (also known as a "synthetic LIBOR").			
EUR LIBOR	Insufficient inputs and "conditions not met". No reference in the FCA announcement of EUR LIBOR being published on a synthetic basis.			
CHF LIBOR	Insufficient inputs and "conditions not met". No reference in the FCA announcement of CHF LIBOR being published on a synthetic basis.			
JPY LIBOR	FCA announced that it will consult on requiring IBA to continue to publish 1-month, 3-month and 6-month Japanese yen LIBOR settings on a synthetic basis, for one additional year. FCA further stated that they do not envisage using new powers to compel IBA to publish any synthetic JPY LIBOR settings after end-2022, and publication of these settings will consequently cease permanently immediately after a final publication on December 30, 2022.			
USD LIBOR	FCA announced that it is continuing to consider the case for using proposed new powers to require continued publication on a synthetic basis of the 1-month, 3-month and 6-month USD LIBOR settings for a further period after end-June 2023, taking into account views and evidence from the US authorities and other stakeholders.			

LIBOR Cessation Announcements

Publishing body	Date	Type	Summary	Link (External)
ICE Benchmark Administration	5 March 2021	Feedback Statement/press release	As a result of IBA not having access to input data necessary to calculate LIBOR settings on a representative basis beyond the above intended cessation dates for such settings, IBA has to cease the publication of: (i) the following LIBOR settings, to take effect immediately after the publication of LIBOR on Friday, December 31, 2021: – EUR LIBOR – all tenors (Overnight, 1 Week, 1, 2, 3, 6 and 12 Months); – CHF LIBOR – all tenors (Spot Next, 1 Week, 1, 2, 3, 6 and 12 Months); – JPY LIBOR – all tenors (Spot Next, 1 Week, 1, 2, 3, 6 and 12 Months); – GBP LIBOR – all tenors (Overnight, 1 Week, 1, 2, 3, 6 and 12 Months); – USD LIBOR – 1 Week and 2 Months; and (ii) the following LIBOR settings, to take effect immediately after the publication of LIBOR on Friday, June 30, 2023: – USD LIBOR – Overnight and 1, 3, 6 and 12 Months unless the FCA exercises its proposed new powers (which are included in the current Financial Services Bill as proposed amendments to the UK Benchmarks Regulation) to require IBA to continue publishing these LIBOR settings using a changed methodology (also known as a "synthetic" basis). The FAC has advised IBA that it has no intention of using its proposed new powers to require IBA to continue the publication of any EUR or CHF LIBOR settings, or the Overnight Spot Next, 1 Week, 2 Month and 12 Month LIBOR settings in any other currency, beyond the above intended cessation dates for such settings. The FCA has also advised IBA that it will consult on using these proposed new powers to require IBA to continue the publication on a "synthetic" basis of the 1 Month 3 Month and 6 Month GBP and JPY LIBOR settings beyond such dates and will continue to consider the case for using these proposed powers in respect of the 1 Month, 3 Month and 6 Month USD LIBOR settings. The FCA has confirmed to IBA that, based on undertakings received from the panel banks, it does not expect that any LIBOR settings [ ]	https://www.theice_com/publicdocs/ICE_LIBOR_feedback_statement_on_consultation_on_potential_cessation.pdf https://s2.q4cdn.com/154085107/files/doc_news/ICE-Benchmark-Administration-Publishees-Feedback-Statement-for-the-Consultation-on-Its-Intention-to-Cease-the-Publication-of-LIBOR-Set-Z2E0P.pdf

LIBOR Cessation Announcements (cont'd)

Publishing body	Date	Type	Summary	Link (External)
Bloomberg Index Services Limited	5 March 2021	Credit Adjustment Spread	Spread Adjustment (%) in respect of euro LIBOR, sterling LIBOR. Swiss franc LIBOR, US dollar LIBOR and yen LIBOR	https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf
FCA	5 March 2021	Announcement	FCA will not require IBA to publish any of the following 26 LIBOR settings: – all 7 euro LIBOR settings, all 7 Swiss franc LIBOR settings, the Spot Next, 1-week, 2 month and 12-month Japanese yen LIBOR settings, the overnight, 1-week, 2-month and 12-month sterling LIBOR settings, and the 1-week and 2-months US dollar LIBOR settings, which will cease immediately after 31 December 2021; and – the overnight and 12-month US dollar LIBOR settings, which will cease immediately after 30 June 2023. FCA will consult on requiring IBA to continue to publish the 3 remaining sterling LIBOR settings (1-month, 3-month and 6-month) for a further period after end-2021 on a synthetic basis. FCA will consult on requiring IBA to continue to publish the 1-month, 3-month and 6-month Japanese yen LIBOR settings after end-2021 on a synthetic basis for one additional year. FCA will consider the case to require continued publication on synthetic basis of 1-month, 3-month and 6-month US dollar LIBOR settings for a further period after end-June 2023. These 9 LIBOR benchmark settings (1-month, 3-month and 6-month settings in each of sterling, Japanese yen and US dollar LIBOR) will no longer be representative of the underlying market and economic reality that such setting is intended to measure.	https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf
ISDA	5 March 2021	Announcement	Notes that the announcement constitutes an index cessation event under the IBOR Fallbacks Supplement and the ISDA 2020 IBOR Fallbacks Protocol for all 35 LIBOR settings. As a result, the fallback spread adjustment published by Bloomberg is fixed as of the date of the announcement for all euro, sterling, Swiss franc, US dollar and yen LIBOR setting	https://www.isda.org/a/8PZTE/ISDA-Statement-on-FCA-LIBOR-Announcement-final.pdf
ISDA	5 March 2021	Guidance	Describes how the terms of the ISDA 2020 IBOR Fallbacks Protocol published on 23 October 2020 and Supplement number 70 to the 2006 ISDA Definitions, finalized on 23 October 2020, and published by ISDA and effective on 25 January 2021 apply to the FCA LIBOR Announcement.	https://www.isda.org/a/KPZTE/ISDA-Guidance-on-the-UK-FCA-Announcement-on-the-LIBOR-Benchmarks.pdf

LIBOR Cessation Announcements (cont'd)

Publishing body	Date	Type	Summary	Link (External)
			The Guidance also describes how the terms of the 2006 ISDA Definitions Benchmarks Annex to the ISDA Benchmarks Supplement apply to the FCA LIBOR Announcement	
FCA	March 2021	Statement of Policy	Identifies relevant factors that FCA would take into account in designating a critical benchmark under Article 23A BMR	https://www.fca.org.uk/publication/policy/statement-policy-benchmarks-article-23a-bmr.pdf **Note also the relevant** Feedback Statement.
FCA	March 2021	Statement of Policy	Identifies relevant factors that FCA would take into account in imposing requirement on a benchmark administrator under Article 23D BMR	https://www.fca.org.uk/publication/policy/statement-policy-fca-powers-article-23d-bmr.pdf **Note also the relevant** Feedback Statement.
ARRC	5 March 2021	New Release	ARRC acknowledges and commends the developments set out above. Note: ARRC has previously stated that it will match ISDA's spread adjustment values for non-consumer products so cash market participants that use ARRC spread adjustments in their fallback language will also use the spread adjustment values set today.	https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Press_Release_Endgame.pdf
ARRC	8 March 2021	New Release	ARRC confirms a "Benchmark Transition Event" has occurred under ARRC Fallback Language	https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Benchmark_Transition_Event_Statement.pdf
ARRC	25 March 2021	Recommendation	ARRC Supplemental Recommendations of Hardwired Fallbacks Language for LIBOR Syndicated and Bilateral Business Loans	https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/arrc-supplemental-hardwired-recommentation

LIBOR Cessation Announcements (cont’d)

Publishing body	Date	Type	Summary	Link (External)
LSTA	5 March 2021	News Release	LSTA summarises developments above and provides a useful summary of the importance of the FCA announcements, including implications on ARRC language.	https://www.lsta.org/news-resource/fca-announcement-spread-adjustments-set-anticpated-libor-timeline-confirmed/
Bank of England	5 March 2021	News Release	Reflects updates above and urges market participants to continue to take the necessary action to ensure they are ready.	https://www.bankofengaland.co.uk/news/2021/march/announcements-on-the-end-of-libor
The Working Group on Sterling Risk-Free Reference Rates	March 2021	News Release	Statement welcoming announcements by the Financial Conduct Authority, ICE Benchmark Administration and ISDA on the end of LIBOR reflects update above.	https://www.bankofengalnd.co.uk/-media/boe/files/markets/benchmarks/rfr/statement-welcoming-announcments-on-the-end-of-libor-march-2021.pdf?la=en&hash=AFCEB2863562D9800172C87D755A7CFFDB806DD6

Tough Legacy Spaghetti – An Example

FCA introduces a synthetic LIBOR in 2023 for USD LIBOR. Prohibits use for bonds issued by UK supervised entities (as well as everything else potentially in scope of BMR) but exempts from the prohibition all legacy bonds.

01 Bond

A legacy bond references USD LIBOR, was issued by a UK supervised entity and is governed by English law. Based on the above use by the FCA of its powers, it is within the exemption (although query whether it is possible for a legacy bond to be caught by the prohibition in the first place). The bond has a cessation trigger only which is never triggered. Synthetic LIBOR applies but a party may argue cessation fallback applies.

02 US Loan

A legacy US domestic loan governed by NY law which references USD LIBOR refers to the same screen page as the bond. The fallbacks are only triggered by a cessation event. It describes LIBOR as the "interbank deposit rate appearing on screen page X". A litigation risk may be created irrespective of the FCA's intention that synthetic LIBOR only be used for a narrow class of bonds.

Tough Legacy Spaghetti – Another Example

Unremediated Derivative

A legacy English law OTC derivative contract entered into by a UK supervised entity references USD LIBOR and is not amended via the ISDA Protocol, for whatever reason. It is governed by English law and is not covered by the exemption. A party wants frustration – it is out-of-the-money. The other party ideally wants LIBOR to mean synthetic LIBOR with contractual continuity (and wants certainty that termination rights are not triggered). Will the prohibition apply? What does the FCA intend to happen to that contract. Can a party argue that contractual termination rights might be triggered?

LMA syndicated loan

A legacy syndicated loan governed by English law also references USD LIBOR and does not have a non-representativeness trigger. Upon cessation and various other triggering events, it provides for cost of funds as a fallback unless the requisite majority agree transition. The lenders are a combination of UK supervised and non-supervised lenders. The lenders were resigned to cost of funds and had given indications to the borrower of what the rate would become upon LIBOR cessation (and are managing the reference bank polling process, even though they question the purpose, so as not to breach contract). What is happening now to this loan? Potentially the loan references the synthetic LIBOR now and the contract is beyond BMR scope. If a safe harbor applies, what should it say?

Tough Legacy Spaghetti (cont'd)

EU/US measures

If above contracts were between EU entities, then potentially the EU replacement rate would instead apply to the extent the parties don't change and subject to conflict with governing law. If NY legislative measures are introduced, the ARRC proposals may apply to NY law contracts. After the transitional period (end 2023 but with the option to extend to end 2025) for third country benchmarks which cover LIBOR post-Brexit, there will be general supervisory restrictions on new use of LIBOR under EU BMR.

Conclusion

The impact involves a granular assessment of the fallback, the governing law, the location of the parties and the application of (potentially more than one) legislative solutions and any one of these can produce a different outcome (with ambiguity as to the correct outcome)… tough legacy spaghetti. Note the final version of the NY legislative solution was amended to try and remediate this concern to an extent.

Safe Harbors – Including from Litigation

Safe harbor	US (NY)	EU (EU BMR)	UK (FSB)
LIBOR means LIBOR (i.e. the rate published on the screen even if it is synthetic LIBOR)	X	X	X*
Illegality and force majeure	X	X	X*
Prohibition not affect enforceability	X	X	+
Skip dealer poll	+	X	X
CA discretion follows recommendation	+	X	X
Conflict of laws	X	X	X
For panel bank	X	X	X

*HM Treasury recently conducted a consultation on the inclusion of such safe harbors in the FSB

Triggers and Conflicts of Laws

Trigger	US (NY)	EU (EU BMR)	UK (FSB)
At risk	X	X	FCA determines that LIBOR is at risk of becoming unrepresentative, or has become unrepresentative and representativeness cannot reasonably be maintained/restored +
Non-representativeness (in the future/ anticipatory)	(The NY legislative solution does not contain a trigger for future loss of representativeness – it contains a "non-representativeness" trigger) X	(Not an anticipatory non-rep trigger but Commission can trigger off anticipatory events including announcement representativeness cannot be restored or it will be ceased) +	+
Non-representativeness (immediate/actual)	+	+	+
Cessation	(An official statement or publication which affects one or more USD LIBOR tenors is not a discontinuance event) +	+	+
Fallback not representative	X	+	N/A

Triggers and Conflicts of Laws (cont'd)

1. Contract between EU entities governed by NY law:
   - FCA decides it doesn't want LIBOR to actually be non-representative at any point
   - Synthetic LIBOR applies
   - No UK prohibition

2. EU independent BMR assessment (not an orderly wind down despite UK FCA efforts)

3. EU territorial reach even if not EU governing law (conflicts of laws)

4. US triggers may never actually be triggered so NY solution is potentially redundant for this contract (some amendments made to address this concern?)

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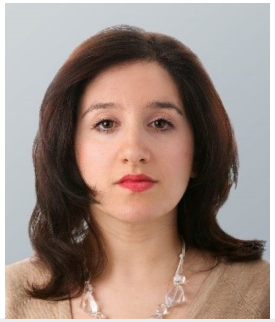

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Questions?