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ARRC Publishes LIBOR Legacy Playbook

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On July 11, the Alternative Reference Rates Committee (the "ARRC") published a "Playbook" to assist market participants in transitioning their legacy LIBOR contracts to an alternative rate by June 30, 2023. The Playbook describes the following steps that the ARRC recommends for the successful implementation of fallbacks in legacy LIBOR contracts:

- First, if market participants have not yet done so, they should conduct a thorough assessment with their legal counsel of the fallbacks that are embedded (either contractually or through legislation) in every LIBOR contract.
- Because of the large number of contracts that will need to transition, the ARRC continues to encourage remediating those contracts where feasible to reference SOFR before June 30, 2023.
- Finally, for those LIBOR contracts that remain, market participants will then need to adopt plans to communicate each contract's fallback with the affected parties. They will need to make sure that they have sufficient resources allocated to ensure that these rate changes are successfully put into effect.

Contract Assessment

Focusing on the trigger events, fallback language, and governing law of LIBOR contracts, the Playbook includes a table in which the ARRC depicts, in broad terms, the anticipated status of LIBOR contracts after June 30, 2023 (click or tap for full-size):

Anticipated Status of Different Broad Categories of USD LIBOR Contracts After June 30, 2023[a]			
	Trigger Events/Governing Law:		
Fallback Type:	Precessation Trigger Included	No Precessation Trigger, Contract under US law	No Precessation Trigger, Contract under foreign law
Hardwired fallback to ARRC recommended or other specific rate	Contract will move to ARRC recommended or other specified hardwired replacement after June 30, 2023	Contract may reference synthetic LIBOR, if published, until LIBOR ceases publication, then move to the hardwired replacement rate	Contract likely to reference synthetic LIBOR, if published, until LIBOR ceases publication, then to move to the specified replacement rate
Fallback to be selected by a Determining Person	Contract will move to rate selected by Determining Person after June 30, 2023 or to the Fed selected replacement if the Determing Person does not choose any replacement	Contract will move to Fed selected replacement after June 30, 2023 if Determining Person chooses it or does not choose any replacement, but may remain on synthetic LIBOR, if published, otherwise, until LIBOR ceases publication and then move to the rate selected by the Determining Person	Contract likely to reference synthetic LIBOR, if published, until LIBOR ceases publication, then to move to rate selected by Determining Person
No fallback, or only references to dealer polls or previously published LIBOR values	Contract will move to Fed selected replacement after June 30, 2023	Contract will move to Fed selected replacement after June 30, 2023	Contract likely to reference synthetic LIBOR, if published, until LIBOR ceases publication, then may convert to fixed rate (if a previous LIBOR value is referenced) or may be subject to legal uncertainty

[a]Specific outcomes will depend on the precise details of any given contract and the laws it is under; market participants should consult with their legal advisors to understand the exact nature of each contract they are a party to.

The U.K. Financial Conduct Authority ("FCA") recently published a consultation that seeks market feedback on whether to publish, on a temporary basis, 1-, 3-, or 6-month synthetic USD LIBOR rates. Such a rate, if published, could affect U.S. law contracts that do not contemplate the transition from LIBOR if it becomes "non-representative" (known as "pre-cessation triggers").

Contract Remediation

The Playbook reiterates the prior guidance from the ARRC and regulators to remediate contracts to move off LIBOR, where feasible, rather than relying upon fallback language of the U.S. federal LIBOR Act. For all remaining contracts, especially business loans, the Playbook advises banks to commit the necessary resources to avoid converting a large number of loan agreements across many borrowers over a short period of time if they do not attempt to work down the stock of LIBOR loans before June 30, 2023. The ARRC also recommended that parties to securities that reference the USD LIBOR ICE Swap Rates strongly consider steps to remediate contracts, including considering the use of buybacks or exchanges.

Fallback Communication and Implementation

The ARRC also emphasized that parties will also need to ensure that the details of the replacement rate and any associated conforming changes are communicated to affected counterparties or investors in an effective and operationally practical manner. The Playbook includes the following best practice recommendations:

- For contracts specifying that a given party (the determining person) will select a replacement rate at their discretion following a LIBOR transition event, that determining person or other specified contractual party should seek to disclose their planned selection to relevant parties at least six months prior to the earlier of either the date that a replacement rate would become effective, or June 30, 2023, using the channels of communication that are available at the time.

- Counterparties to contracts for which a determining person has *not* disclosed their planned selection at least six months prior to the earlier of either the date that a replacement rate would become effective, or June 30, 2023, should seek to determine whether the party (a) agrees that they serve this role under the terms of the contract, (b) intends to fulfill the responsibility of selecting a replacement rate, and (c) can communicate the nature of the replacement rate they expect to select and when they intend to formally select the replacement rate.

- Determining persons, their agents, or other parties responsible for the dissemination of the change in information regarding LIBOR debt and securitizations should use DTCC's enhanced LENS system for communicating rate and conforming changes once it is available.

- In addition to ensuring efficient communication of rate changes, lenders should ensure that they have adequate resources on hand to implement the large number of changes that will occur after June 30, 2023.