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TRANSITION TO SOFR?

JONATHAN THALHEIMER

Author Contact Information:
Jonathan Thalheimer
McGuire Craddock & Strother, PC
Dallas, TX

jthalheimer@mcslaw.com
214.954.6855

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Jonathan Thalheimer
jthalheimer@mcslaw.com
www.mcslaw.com

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Jonathan Thalheimer
jthalheimer@mcslaw.com
www.mcslaw.com

I. CESSATION OF LIBOR.

A. Following the LIBOR scandal and since 2013, the UK's Financial Conduct Authority ("FCA") has regulated LIBOR. In 2014, the contract to administer LIBOR was awarded by the FCA to the ICE Benchmark Administration Limited ("IBA"). LIBOR is based on submissions by panel banks of their estimates of the cost to fund themselves in the wholesale, unsecured funding market. These estimates are based on a waterfall of: (i) eligible transaction data, (ii) transaction-derived data and (iii) transaction data-based expert judgment. See the IBA, *USD LIBOR Methodology*, https://www.theice.com/publicdocs/USD_LIBOR_Methodology.pdf. Not long after the waterfall methodology was created, banks for a variety of reasons dramatically curtailed the unsecured financing of their operations. Without actual market transactions, the first and second tiers of the waterfall became less accessible and the FCA determined that it would be untenable to base LIBOR on expert judgments increasingly untethered from the market. This situation led the FCA to announce that by the end of 2021 it would cease requiring panel banks to make LIBOR submissions and would also cease regulating LIBOR. In essence, LIBOR would go away by the end of 2021. See Andrew Bailey, Chief Executive of the FCA, *The future of LIBOR* (July 27, 2017) https://www.fca.org.uk/news/speeches/the-future-of-libor.

B. Almost four years after the July 2017 announcement, the FCA on March 5, 2021 stated that all LIBOR settings would either cease to be provided by any administrator or no longer be representative:

1. **Immediately after December 31, 2021**, in the case of all sterling, euro, Swiss franc and Japanese yen settings, and the 1-week and 2-month US dollar settings; but provided an additional grace period

2. **Immediately after June 30, 2023**, in the case of the remaining US dollar settings.

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[1] At the State Bar of Texas' 41st and the 42nd Annual Advanced Real Estate Law Courses, I presented respectively on the topics of *LIBOR Debacle And What Actions Should Be Taken Now On Commercial Real Estate Loans* and on *Show Me The Money: The End Of Libor*. For those interested, these earlier papers delve more deeply into the history of LIBOR, its attendant problems and the issues involved in trying to craft a replacement rate. This paper is an update to papers entitled *The End of LIBOR and the Beginning of the SOFR Era* given at State Bar of Texas' 44th Annual Advanced Real Estate Law Course in July of 2022 and LIBOR Transition: Perspective And Recent Developments, at the September 16-17, 2021 55th Annual William W. Gibson, Jr. Mortgage Lending Institute.

C. On March 9, 2021, the Federal Reserve issued a Supervision and Regulation Letter. In that letter supervisory and examination staff were ***encouraged*** to consider taking supervisory action if a financial institution is not ready to cease issuance of new LIBOR-based contracts by the end of 2021. https://www.federalreserve.gov/supervisionreg/srletters/SR2107.htm

D. So as of December 31, 2021, LIBOR was effectively gone for new loans made by regulated institutions and LIBOR will be effectively gone for all other entities in about one year.

E. This paper will touch on what the future holds for variable rate LIBOR replacements and, in particular, the regulatory preferred rate known as the Secured Overnight Financing Rate ("SOFR").

II. LIBOR REGULATORY PROPOSED ALTERNATIVES.

A. Around the world, regulatory bodies have developed alternate benchmark rates to replace LIBOR with rates that are:

1. Transparent;

2. High Volume;

3. Minimize value transfer; and

4. In all respects IOSCO compliant, i.e., comply with a set of recommended practices for administrators of financial market benchmarks set out in the Principles for Financial Benchmarks by the International Organization of Securities Commissions (IOSCO), The Board of the International Organization of Securities Commissions, *Principals for Financial Benchmarks Final Report*, The International Organization of Securities Commissions (July 2013) https://www.iosco.org/library/pubdocs/pdf/IOSCOPD415.pdfhttps://www.iosco.org/.

B. RFRs Worldwide.

1. National working groups in other jurisdictions have similarly identified overnight, nearly risk-free rates ("RFRs") like SOFR as their preferred alternatives, The Alternative Reference Rate Committee, *A Users Guide to SOFR* (April 2019), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/Users_Guide_to_SOFR.pdf, and have proposed their own, country specific, rate replacements:

a. UK.