

# Eye on IBOR Transition



## FCA confirms rules for legacy use of synthetic LIBOR rates and no new use of US dollar LIBOR

December 7, 2021

The interest rate benchmark LIBOR is being wound down and the UK Financial Conduct Authority has announced how it will use its powers under the UK Benchmarks Regulation to aid the orderly wind-down of sterling- and yen-linked “tough legacy contracts.”

### BACKGROUND

In March 2021, the UK Financial Conduct Authority announced that, with the exception of 1-, 3- and 6-month sterling and Japanese yen tenors, all sterling, euro, Swiss franc and Japanese yen LIBOR panels, as well as panels for 1-week and 2-month US dollar LIBOR, would cease at end-2021, with the remaining US dollar LIBOR panels ceasing at end-June 2023.

On 29 April 2021 the UK Government passed the [Financial Services Act 2021](#) (the “FS Act 2021”), which amended the [UK Benchmarks Regulation \(\(EU\) 2016/1011\)](#) (the “UK BMR”), to provide the UK Financial Conduct Authority (“FCA”) with new and enhanced powers to oversee the orderly wind-down of critical benchmarks, including the power to address the risk that LIBOR cessation poses to “tough legacy contracts” (*i.e.*, contracts that genuinely have no or inadequate fallback rate alternatives and no realistic ability to be renegotiated or amended).

The UK BMR grants the FCA new powers to “designate” a critical benchmark under Article 23A where it determines that the benchmark no longer accurately represents, or is at risk of no longer accurately representing, the underlying market it seeks to measure, and where the “representativeness” of the benchmark cannot or should not be maintained or restored. Where the FCA “designates” a critical benchmark under Article 23A, the use of that benchmark is, by default, prohibited by UK-regulated entities once the designation comes into force. However, the FCA also has two other powers:

- to carve out certain contracts from this prohibition to allow UK-regulated entities to continue to use the benchmark for them; and
- to require the ongoing publication a designated benchmark using a revised calculation methodology (sometimes referred to as publication on a “synthetic” basis).

### FCA ACTION IN RELATION TO LIBOR

In the case of LIBOR, the FCA has previously:

- designated 1-, 3-, and 6-month LIBOR tenors of sterling and Japanese yen as a critical benchmarks under Article 23A; and

- required the publication of these benchmarks on a synthetic basis until the end of 2022, to allow more time to complete transition to alternative reference rates.

Subsequently, on 16 November 2021, following a consultation on which legacy contracts should be exempted from the prohibition on the use of LIBOR, the FCA additionally confirmed in a [draft notice](#) that it will allow UK-regulated firms to continue to use 'synthetic' sterling and yen LIBOR rates in all legacy LIBOR contracts, other than cleared derivatives, for a limited amount of time. This exemption will apply to all existing contracts as at the end of 31 December 2021 that use LIBOR. It will not affect the continued use of LIBOR by non-UK-regulated firms, who are not in any event subject to the prohibition in Article 23A of the UK BMR.

## NO NEW USE OF US DOLLAR LIBOR

Although 5 US dollar LIBOR settings will continue to be calculated by panel bank submission until end-June 2023, on 16 November 2021 the FCA also confirmed that the use of US dollar LIBOR will be prohibited for UK-regulated firms in most new contracts written after 31 December 2021. The move to end the use of US dollar LIBOR in new contracts is supported by regulators in the US and around the world. The FCA has provided clarification to help firms implement this restriction.

## COMMENT

Echoing the approach of other international regulators, the FCA, PRA and BoE have made it clear that UK-regulated firms must actively transition their contracts to alternative rates prior to the end of 2021 wherever possible. While the FCA's announcement relating to the permitted use of synthetic LIBOR rates appears to grant an exemption to a wide range of contracts, the announcement is not intended to be a derogation from this fundamental principle. Recent [FCA guidance](#) relating to synthetic LIBOR states: "*Users of LIBOR should continue to focus on active transition rather than relying on synthetic LIBOR. Synthetic LIBOR will not be published indefinitely.*"

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## ABOUT THE EYE ON IBOR TRANSITION BLOG

Our [Eye on IBOR Transition](#) blog is designed to enable our global, cross-practice IBOR lawyers to keep clients abreast, in real time, of continuing regulatory and legislative announcements, trade group tools, and the status of market transition.

Our blog is just one of the resources that we have created to facilitate your IBOR transition readiness as you watch the clock count down to 31 December 2021.

Be sure to consult the comprehensive repository of IBOR resources, regulations and thought leadership on our [IBOR Transition portal](#), register for weekly news and event announcements through our [IBOR Digest](#), and listen to our attorneys share their expertise during our [IBOR Transition Webinar Series](#).