Cassels

Interest Rates Watch Series: Reminder - OSFI Expects No New USD LIBOR Transactions

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Welcome back to our *Interest Rates Watch* series, developed to provide timely updates and practical advice on developments related to interest rates and benchmarks on a regular basis. As always, we are here to help.

December 31, 2021 has come and gone and, for the most part, the cessation of 1-week and 2-month USD LIBOR tenors (which were last published on December 31, 2021), and the impact on existing contracts tied to USD LIBOR, has been uneventful.

Although market participants may not have been significantly impacted by the December 31, 2021 LIBOR transition milestone, and notwithstanding that certain tenors of USD LIBOR will continue to be published until June 30, 2023,[1] as a reminder the Office of the Superintendent of Financial Institutions (OSFI) provided notice in June 2021 that OSFI expects federally regulated financial institutions (FRFI) to stop using USD LIBOR as a reference rate in new transactions after December 31, 2021.[2] OSFI's guidance for Canadian FRFI's is consistent with guidance provided to US, UK, and other international financial institutions. As such, new contracts should no longer be tied to USD LIBOR and should instead use an alternative reference rate. See our earlier commentary on alternative reference rates here.

We have started to see the switch from USD LIBOR to various alternative reference rates, with the most popular rates based on the Secured Overnight Financing Rate (SOFR) (including contracts tied to SOFR term rates (Term SOFR) and daily simple SOFR). We have also seen contracts with spread adjustments (to account for the anticipated differential between USD LIBOR and SOFR) and without spread adjustments. We expect that the number of contracts tied to Term SOFR or another alternative reference rate will increase significantly in the first quarter of 2022.

In preparation for the shift from USD LIBOR to an alternative reference rate, parties should:

- familiarize themselves with, and consider the suitability of, various alternative reference rates;
- confirm that existing contracts tied to USD LIBOR have adequate fallback language; and
- for existing contracts with fallback language, consider whether the fallback rate is the desired fallback rate from a commercial perspective.

We will continue to monitor developments in this space and issue further articles relating to interest

rates. Find other articles in our Interest Rates Watch Series here.

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[1]The remaining USD LIBOR tenors (overnight, 1-month, 3-months, 6-months and 12-months) will cease to be published after June 30, 2023.

[2] https://www.osfi-bsif.gc.ca/Eng/fi-if/in-ai/Pages/libor.aspx

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This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.