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# IBOR Transition: Presentation to Global Peer Financing Association

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## Upcoming Developments in 2021 – LIBOR

- **Questions over Sustainability of LIBOR – insufficient transactions in unsecured wholesale bank borrowing market**
  - At the end of 2021 UK's Financial Conduct Authority (“FCA”) will no longer encourage/compel panel bank submissions
  - Market participants should not rely on LIBOR continuing to be available
  - Transition to risk free rates

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## Upcoming Developments in 2021 – LIBOR

- **Timeline for Termination (subject to ongoing consultations)**
  - UK's FCA recently issued a key announcement with regard to the future cessation and loss of representativeness of LIBOR
  - December 31, 2021 for one-week and two-months tenor USD LIBOR
  - June 30, 2023 for all remaining USD LIBOR settings (overnight, 1-month, 3-months, 6-months and 12-months tenors)

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## Upcoming Developments in 2021 – LIBOR

- **SOFR: Remaining Questions**
  - Simple average or Compound average?
  - In advance or In arrears?

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## Upcoming Developments in 2021 – LIBOR

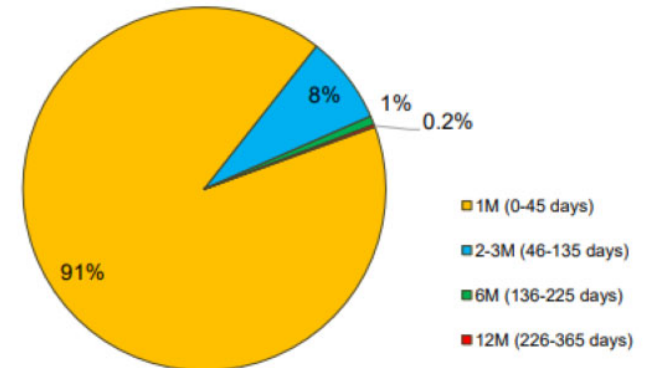
- **ISDA has published the IBOR Fallbacks Supplement to the 2006 ISDA definitions as well as the ISDA IBOR Fallbacks Protocol**
  - ISDA's fallback rate is an “all-in” rate published by Bloomberg – SOFR set in arrears plus adjustment
  - Concerns in the market over the different types of SOFR in derivatives vs. lending vs. FRN's

## Upcoming Developments in 2021 – CDOR

- **Timeline for Termination**
  - May 17, 2021 for 6-month and 12-month tenors of CDOR
  - However, 6 month and 12 month tenors of CDOR not widely used.
- **Proposed Replacement Rate: CORRA**
  - Canadian Overnight Repo Rate Average

□ BAs 3M and under represent the majority of average daily trading volume

Average daily BA trading volume since 2015 by term as a percentage of total daily trading volume



Source: CDS

Last observation: 03/11/2020

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## Upcoming Developments in 2021 – LIBOR and CDOR Fallback Provision – Hardwired Approach vs Amendment Approach

- Most large Canadian financial institutions following “hardwired approach” instead of the “amendment approach” for fallback provisions
- In the US, we see more variation between the “amendment approach” and the “hardwired approach”

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## Upcoming Developments in 2021 – LIBOR and CDOR Fallback Provision – Hardwired Approach vs Amendment Approach *continued*

### Sample “Amendment Approach” provision (abridged):

[...] upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrower may amend this Agreement to replace [LIBOR/CDOR] with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. [...]

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## Upcoming Developments in 2021 – LIBOR and CDOR Fallback Provision – Hardwired Approach vs Amendment Approach *continued*

### Sample “Hardwired Approach” provision (abridged):

[...] if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with [...] the definition of “Benchmark Replacement” for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes [...] without any amendment to, or further action [...]

### Benchmark Replacement

for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date:

- (1) the sum of: (a) [Term SOFR] and (b) the related Benchmark Replacement Adjustment;
- (2) the sum of: (a) [Daily Simple SOFR] and (b) the related Benchmark Replacement Adjustment;
- (3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current [...] at such time and (b) the related Benchmark Replacement Adjustment;

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**FCA's recent announcement is expected to constitute a "permanent cessation trigger" under credit agreements and "an index cessation event" under the ISDA Fallbacks Supplement and 2020 IBOR Fallbacks Protocol**

- Under credit agreements or notes, this permanent cessation trigger may cause an obligation to notify borrowers or noteholders of the announcement.

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## Tax issues related to transition to risk free rates

- Issues for counterparty
- Disposition of the obligation

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- **Questions?**



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Timothy leads the capital markets tax practice at Osler. He advises on a wide range of corporate finance transactions, from traditional IPOs and private placements to innovative financial instruments, including hybrid securities, Basel III compliant capital, securitizations, securities loans, and derivatives. He acts for Canadian and foreign financial institutions and other capital markets participants, including global investment banks, dealers, exchanges and clearing houses. He provides advice to domestic and offshore hedge funds, pension plans, ETFs, and mutual funds.

Timothy sits on the Osler Partnership Board and is Co-chair of the Firm's UK Desk.



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Lisa Mantello is an experienced transactional lawyer who is recognized for her fresh perspective and creativity in solving problems for her clients.

Lisa practices in all areas of financial services with particular expertise in domestic and cross-border financing transactions, structured finance and derivatives. Lisa brings to the table a wealth of practical knowledge from being involved in some of the most complex and dynamic transactions of the last decade in the Canadian structured finance market.

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