Bank of America (BofA) IBOR Transition Statement

Introduction

In 2017, the U.K.'s Financial Conduct Authority (**FCA**) announced that it would no longer persuade or require participating banks to submit rates for the London Interbank Offered Rate (**LIBOR**) after 2021. Since then, regulators, trade associations and financial industry groups comprising official sector entities and private market participants across jurisdictions (including the Alternative Reference Rates Committee (**ARRC**) in the U.S. and the Sterling Risk Free Rate Working Group in the U.K.) have identified replacement rates for Interbank Offered Rates (**IBORs**), established milestones for the transition from IBORs to alternative reference rates (**ARRs**) and published recommended contractual provisions and conventions to allow new and existing contracts and products to incorporate fallbacks or reference ARRs.

In the U.S., the banking regulators issued a statement in November 2020 encouraging banks to cease entering into new contracts that use U.S. dollar LIBOR as a reference rate as soon as practicable and in any event by December 31, 2021, subject to certain limited risk management exceptions. The FCA has issued a Notice of Prohibition under the UK Benchmarks Regulation, thereby codifying similar provisions under UK law. Other regulators and official sector working groups have established similar milestones (with limited risk management exceptions to entry into new LIBOR-linked contracts) in relation to other LIBOR currencies.

A wide range of contracts, products and services require payments or calculations to be made by reference to IBORs or otherwise include provisions referencing IBORs (*e.g.*, default interest and valuation/pricing provisions). In particular, IBORs are used in mortgages, consumer, corporate and commercial loans, derivatives, floating-rate notes, preferred securities, and other adjustable-rate products and financial instruments. The cessation of IBORs, including LIBOR, means that a significant number of IBOR-linked products and contracts, including related hedging arrangements, must be transitioned or implement fallbacks to ARRs.

LIBOR Cessation

On March 5, 2021, ICE Benchmark Administration Limited (**IBA**) announced its intention to cease publication of all LIBOR settings and, in response, the FCA announced a plan for the future cessation and loss of representativeness of LIBOR benchmarks.

After December 31, 2021, the following LIBOR settings ceased publication:

- All tenors of euro (EUR) and Swiss franc (CHF);
- Overnight, 1-week, 2-month, and 12-month British sterling (GBP);
- Spot Next, 1-week, 2-month, and 12-month Japanese yen (JPY); and
- 1-week and 2-month U.S. dollar (USD).

Following December 31, 2021, the 1-month, 3-month, and 6-month settings of GBP and JPY LIBOR became permanently non-representative but are being published on a synthetic basis through the end of 2022 to support transition of legacy contracts. The FCA has stated that synthetic JPY LIBOR will not be published after year-end 2022. Continued publication of synthetic GBP LIBOR will be reassessed annually by the FCA.

For the remaining USD LIBOR settings, after June 30, 2023, the overnight and 12-month USD LIBOR settings are expected to cease publication, and the 1-month, 3-month, and 6-month USD LIBOR settings are expected to become permanently non-representative. Publication of 1-month, 3-month, and 6-month USD LIBOR settings on a synthetic basis after June 2023 remains subject to FCA determination.

Further, U.S. financial regulators have issued supervisory guidance encouraging supervised institutions to cease entering into new contracts referencing USD LIBOR, with certain limited exceptions with respect to market-making, hedging or risk reducing activity related to USD LIBOR transactions executed before January 1, 2022. The FCA has issued a Notice of Prohibition under the UK Benchmarks Regulation, thereby codifying similar provisions under UK law.

With respect to contracts or products that reference LIBOR, LIBOR cessation or non-representativeness may impact such contracts or products, including with respect to the calculation and setting of any spread adjustments and the date on which the replacement rate under such contract or product becomes effective. With respect to derivatives and other relevant products and for all 35 LIBOR currency-tenor settings: (i) the FCA's March 5, 2021 announcement on LIBOR cessation and non-representativeness constitutes, as of that date, an "Index Cessation Event" for the purposes of and as defined in each of the Attachment to the ISDA 2020 IBOR Fallbacks Protocol and Supplement 70 to the ISDA 2006 Definitions; and (ii) March 5, 2021 constitutes a "Spread Adjustment Fixing Date" under the Bloomberg IBOR Fallback Rate Adjustments Rule Book. The ARRC has separately confirmed that any U.S. dollar non-consumer cash products incorporating the ARRC-recommended fallback language will apply the same (now fixed) spread adjustment values to the fallback rates.

Please note that each relevant LIBOR-linked contract and product will transition to a replacement rate (*e.g.*, based on the Secured Overnight Financing Rate (**SOFR**) or the Sterling Overnight Index Average (**SONIA**)) in accordance with the terms and fallback provisions (if any) contained therein. Under most industry working group recommended fallback provisions, such contracts and products will transition to an ARR when the relevant LIBOR currency-tenor ceases to be published or becomes non-representative. Note also that circumstances could change, possibly without notice, and such changes could impact the timing and other information described herein.

Potential Impact of the Transition

IBOR reforms, including the LIBOR changes discussed above, require market participants to consider and prepare for the impact of: (i) the cessation of the remaining IBORs; and (ii) the continued transition to ARRs.

In particular, an IBOR may no longer be published or may cease to be representative of the underlying market and economics that it is intended to measure (each has already occurred for certain LIBOR settings), be calculated differently, and/or become unavailable. The impacts of such events may include, but are not limited to, those described below, any of which may impact your investments or transactions, as well as any contracts, products or services that are linked to, or that reference, IBORs.

(1) Changes to calculation methodology

ARRs have compositions and characteristics that differ significantly from the IBORs they may replace. In some cases, the ARRs may have limited history and may demonstrate less predictable or different performance over time than the IBORs they replace. For example, while IBORs are forward-looking term rates, certain ARRs are backward-looking (*i.e.*, they are published after the period to which they relate) overnight rates and therefore do not include a "term" element. In addition, most ARRs are calculated on a compounded or weighted-average basis, may involve operationally complex calculations and, unlike IBORs, do not reflect bank credit risk and therefore may require a spread adjustment. Although certain forward-looking ARR-linked term rates are currently available, including Term SONIA and Term SOFR, there is no guarantee that a forward-looking term rate will be developed for all ARRs and the ability to use such rates may be limited.

(2) Impact on liquidity and pricing

The cessation of IBORs and the transition to ARRs may adversely impact the value and/or performance of an IBOR-linked contract and/or product and cause market dislocations, fragmentation and disruptions. In addition, IBOR-linked products are likely to become less liquid as the transition process develops and continues, and other unforeseen consequences may arise if such products are held beyond relevant IBOR cessation dates. New financial products linked to ARRs may initially be less liquid if trading volumes are lower than the trading volumes of corresponding existing IBOR-linked products. There is no guarantee that liquidity in ARR-linked products will develop.

(3) ARRs may perform differently from IBORs

There can be no assurance that ARRs (including any methodologies for adjustments) will be similar to, or produce the economic equivalent of, the IBORs they seek to replace, particularly as several ARRs have characteristics that differ significantly from the IBORs they seek to replace (as discussed above). In addition, certain ARRs have limited history and it is also possible that ARR-linked products may perform differently from IBOR-linked products during times of economic stress or adverse or volatile market conditions and across the credit and economic cycle.

(4) Impact on hedging and other linked products

ARRs may vary across, or even within, categories of contracts, products and/or services. The formulation of an ARR (*e.g.*, a backward-looking rate, a simple daily rate, a compounded rate or a forward-looking term rate) or the process for calculating any spread adjustment may diverge by currency, financial instrument and/or the timing of the transition. These differences may have an economic impact, including the ability to maintain effective hedges of certain contracts, products and/or services, and therefore can create an economic mismatch.

(5) Existing fallbacks or contract remediation

Certain IBOR-linked contracts, products and/or services include a process to transition to using an ARR in the event of an IBOR cessation event. However, these terms may have been developed: (i) prior to the announcements regarding the permanent cessation or non-representativeness of certain specified IBORs; or (ii) if following such announcements, in an environment where it was not yet certain how an ARR would operate in practice. Therefore, it may be difficult to determine the specific successor or fallback rate that applies, when it applies and whether it will have an adverse economic impact on your IBOR-linked products.

In addition, where existing IBOR-linked contracts, products and/or services do not already include a process to transition to an ARR or where the transition process may benefit from adjustment, such contracts, products and/or services may need to be amended in accordance with their terms, which may require your consent or the consent of the relevant third parties (which may include BofA).

Some outstanding IBOR-linked products and contracts are particularly challenging to modify, for example, due to the requirement that all impacted parties consent to such modification. There can be no guarantee that any third party will agree to a particular ARR or any related amendments, and it is possible that consents required for amendments will not be obtained. Legislation and/or regulations in one or more countries may be introduced that may address such challenges in IBOR-linked contracts, products and/or services; for example, legislation has been passed in the E.U., the U.K. and the U.S. at the federal level. You will need to assess how any legislation impacts your IBOR-linked contracts and/or products. In particular, if there is an overlap between legislation or regulation in different jurisdictions, you may need to conduct a conflict of laws assessment to determine which, if any, legislation or regulation would take priority.

(6) Potential conflict of interest

BofA may have a right to exercise discretion when a successor rate, including an ARR and/or the applicable spread adjustment to the designated rate (including an IBOR), is selected or determined for a contract, product or service, including as to the timing of such selection or determination, pricing or any other adjustment to account for the difference between the successor rate and the designated rate it seeks to replace. The successor rate and any such adjustments BofA selects may be inconsistent with, or contrary to, your interests or positions.

(7) Other impacts

In connection with industry-wide milestones, central clearing counterparties (**CCPs**) in Europe and the U.S., which act as intermediaries and require collateral deposits for the clearing and settlement of interest rate swap products and other derivatives, changed the interest rate used to calculate amounts due to counterparties for collateral deposits posted with them from the European Overnight Index Average (**EONIA**) to the Euro Short-Term Rate (**ESTR**) and the Effective Fed Funds Rate (**EFFR**) to SOFR. This may have an impact on your portfolio from a valuation, operational or risk perspective.

CCPs in Europe and the U.S. intend to convert legacy cleared swaps that reference USD LIBOR to the corresponding ARR (together with a spread adjustment). If you enter into cleared swaps referencing USD LIBOR (either directly or through BofA) you should be aware that this conversion process will make certain amendments to the terms of those cleared swaps and you should consider the impact of these changes, particularly from a hedging perspective.

To the extent an IBOR is used as an input to, or price source for, another benchmark (*e.g.*, certain Singapore and Thai benchmarks and the ICE Swap Rate), IBOR cessation also may have an impact on your contracts or products that reference such rates.

In addition to the potential impacts discussed above, there are a range of potential legal, financial, tax, accounting, regulatory, operational and/or other effects which may be relevant depending on specific circumstances. While this IBOR Transition Statement is focused on IBORs, the same potential impacts are applicable to other benchmark rates that may no longer be published, be calculated differently, become unavailable and/or cease to be representative.

Next Steps

If you have IBOR-linked products or services (or other contracts, products or services that reference an IBOR-related benchmark rate that may no longer be published, be calculated differently, become unavailable and/or cease to be representative as a result of IBOR cessation), we encourage you to discuss with your counterparties (including BofA), consult your legal, tax, financial and other professional advisors, and review the terms of your contracts, products or services. It is particularly important to understand any fallback or transition provisions (*e.g.*, the process of using an ARR as a fallback or transitioning to an ARR in the event of an IBOR cessation), how such provisions operate, whether legacy contracts need to or can be amended or are impacted by IBOR-related legislation or regulation, and whether there is a potential economic mismatch between ARRs and the IBORs they seek to replace, including between hedges and hedged exposures.

Disclaimer

This statement includes a summary of potential impacts and it is not intended to be exhaustive. This document is dated as of March 11, 2022. Material developments may have occurred since the preparation of this statement. The content of this statement is subject to change without notice, and BofA accepts no obligation to update or correct the information and accepts no liability for the impact of reliance on, or any decisions made based upon, the information, views or opinions expressed herein. This statement is not intended to supersede, and should be considered in conjunction with, any disclaimers, disclosures, or other statements identifying potential risks provided to you by BofA or any of its affiliates, including specific risks related to IBORs, ARRs or other applicable benchmark rates referenced by your contracts, products or services. This statement is not intended to be, and should not be relied upon as, a representation, warranty or other assurance or as financial, tax, accounting, legal or other advice. If you have questions with regard to the contents of this document, please consult your financial, legal, accounting, tax and/or other professional advisors.