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IBA's LIBOR Consultation and Banks' Potential Notice Obligations in respect of a Benchmark Transition Event

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The ICE Benchmark Administration Limited (IBA), the administrator of the London Interbank Offered Rate (LIBOR), published a consultation on December 4, 2020 requesting public feedback on its intention to cease the publication of (1) the 1-Week and 2-Month USD LIBOR on December 31, 2021 and (2) the Overnight and 1, 3, 6 and 12 Month USD LIBOR on June 30, 2023 (the IBA Consultation).

The IBA Consultation closed to public feedback on January 25, 2021 and now the IBA intends to share the results of the IBA Consultation with the Financial Conduct Authority and publish a feedback statement that summarizes the responses it received. The market expects that the IBA feedback statement is likely to be made public as early as the first part of February.

Many market participants and trade organizations suspect that the IBA's feedback statement could, depending on its contents, constitute a public announcement by the IBA that it will cease to provide all available tenors of LIBOR after the dates set for each tenor of LIBOR described above. If so, the IBA's feedback statement could be viewed as a "benchmark transition event" (as defined in or otherwise described in many loan documents), which could, depending on the language of the fallback provisions contained therein, trigger a notice obligation of administrative agents and lenders.

A primary example of this notice obligation is contained in the Alternative Reference Rates Committee's (ARRC) recommended "hardwired" and "amendment" fallback language for new originations of LIBOR syndicated loans and bilateral business loans. Each of ARRC's hardwired and amendment fallback language requires the administrative agent or lender, as applicable, to provide prompt notice to borrowers and/or other lenders upon the occurrence of any "benchmark transition event" (as defined therein and which includes, among other things, a public statement by the IBA announcing that the IBA will cease to provide available tenors of LIBOR, permanently or indefinitely, provided that there is no successor administrator that will continue to provide any available tenor of LIBOR). Accordingly,

administrative agents or lenders that have adopted the ARRC's recommended "hardwired" or "amendment" fallback language in their loan documents would be required to provide prompt notice to borrowers and/or other lenders in the event the IBA's feedback statement constitutes a benchmark transition event. In addition, for those administrative agents and/or lenders who have adopted bespoke fallback language in their loan documentation other than the ARRC's recommended hardwired or amendment fallback language or substantial modifications thereto, the applicable fallback language in each respective loan or credit agreement should be closely reviewed to determine whether notice must be provided to the borrowers and/or other lenders upon the issuance of IBA's expected feedback statement regarding the cessation of LIBOR.

If you have any questions regarding the IBA's consultation and feedback statement, or regarding LIBOR cessation generally, please contact any one of our LIBOR transition team members.