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LIBOR'S LAST LUCID MOMENT

*The discontinuance of LIBOR in 2021 is likely to cause disruption in debt capital mark*ets and significant litigation. *The author outlines the problems raised and discusses the complexities of SOFR as an alternative reference rate. He then describes proposed solutions and closes with steps institutions can take now to minimize potential disruptions.*

By Lincoln Finkenberg *

The London Interbank Offered Rate ("LIBOR") is expected to be discontinued on December 31, 2021. The end of LIBOR will likely cause widespread disruption in debt capital markets, particularly with respect to debt securities using LIBOR-based interest rates and with no means to substitute an alternate rate.

THE LONDON INTERBANK OFFERED RATE

LIBOR is the average quoted interest rate at which major banks would lend to each other on a short-term unsecured basis.[1] LIBOR is ubiquitous in global markets and is used in more than $350 trillion of financial transactions. Issuers frequently use LIBOR to set the interest rate on bonds, including floating rate notes, securitizations, corporate bonds and municipal debt, as well as credit facilities, commercial loans, derivatives and most types of consumer loans.

THE PHASEOUT OF LIBOR

In 2012, a number of banks were found to have submitted fraudulent LIBOR quotes, leading to aggregate settlements of over $9 billion. Still, LIBOR-rigging remains the subject of both civil and criminal litigation: attorneys general in at least five states are currently conducting investigations; authorities in the United States and the United Kingdom continue to investigate; and multiple U.S. courts are hearing class action lawsuits. Though many banks have stated that they no longer wish to provide LIBOR quotes, the U.K. Financial Conduct Authority ("FCA") is using its legislative power to require these banks to continue providing quotes, given the trillions in outstanding transactions that rely on LIBOR.

The rigging of LIBOR undermined its integrity in the public markets, leading the FCA to conduct a study to determine LIBOR's future. One obvious concern is that LIBOR is based on a relatively small number of

[1] LIBOR is an interest-rate average calculated from estimates submitted by the leading banks in London. LIBOR is currently calculated for five currencies (USD, GBP, EUR, CHF, and JPY) and for seven tenors in respect to each currency (overnight/spot, one week, one month, two months, three months, six months and 12 months).

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