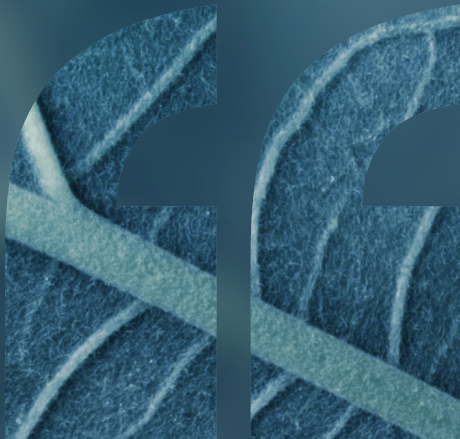
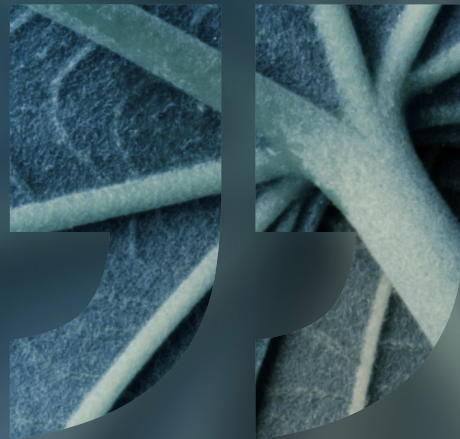


C L I F F O R D
C H A N C E



**RATE EXPECTATIONS:
TRANSITIONING AWAY
FROM LIBOR – PRACTICAL
GUIDANCE FOR
CORPORATE TREASURERS**



— THOUGHT LEADERSHIP

MAY 2019



RATE EXPECTATIONS: TRANSITIONING AWAY FROM LIBOR – PRACTICAL GUIDANCE FOR CORPORATE TREASURERS

It has been over 18 months since Andrew Bailey, Chief Executive of the UK's Financial Conduct Authority (FCA), announced the need for the market to transition away from LIBOR before the end of 2021. As we get ever closer to that December 2021 end date, this briefing explores the current state of LIBOR transition, what a move to risk-free rates will mean in practice for corporate treasurers, and some key steps that treasurers might take in the near term to ready themselves for LIBOR's potential demise.

Executive summary:

- The FCA have made clear the need to transition away from LIBOR before the end of 2021.
- Replacement risk-free rates have been chosen for each of the LIBOR currencies.
- There are a number of significant differences between LIBOR and the RFRs that have been chosen to replace them.
- Regulators and policymakers are focused on how to manage those differences and accelerate the transition away from LIBOR.
- The various products and currencies are at differing stages of transition.
- The scale of the transition cannot be underestimated and will require a significant concerted effort from all market participants.
- Corporates need to start taking steps now to prepare for the end of LIBOR.

Where are we now?

National working groups have been established for each of the five LIBOR currencies with each working group now having selected an overnight risk-free rate (RFR) as their preferred LIBOR replacement rate (see the Annex to this note).

The RFRs are currency-specific and each currency working group is at a different stage of transition, with some currencies far more advanced than others. For instance, both the revised form of SONIA (the replacement rate for Sterling LIBOR) and SOFR (the replacement rate for USD LIBOR) have been published since April 2018, whereas €STR (the preferred alternative rate to EONIA) is not expected to be published until October 2019.

As we will see, the RFRs which have been selected differ from LIBOR in a number of material respects. The working groups are now focused on how to manage those differences and catalyse the transition towards RFRs.

Key RFRs:

- USD: SOFR
- Sterling: SONIA
- Euro: €STR (replacement for EONIA)

How do the RFRs differ from LIBOR and what do those differences mean in practice?

RFRs:

Risk-free rates tend to be robust, overnight interest rates which are anchored in active, liquid underlying markets. In contrast, reference rates such as LIBOR, which were originally developed to reflect interbank lending, now relate to a very thin market as banks have turned to alternative funding sources.

Economic differences

LIBOR is currently published for each of the five LIBOR currencies for specified interest periods at the beginning of those periods. It is intended to measure the funding costs of banks and embeds both a term and a credit spread to compensate for the credit risk of lending to another bank on a term basis. The RFRs, by contrast, are overnight rates determined on the basis of historic data and include only a nominal element of credit spread. They are, therefore, in most cases expected to be lower than their LIBOR equivalents.

The economic difference between LIBOR and the replacement RFRs ultimately means that any transition from LIBOR to RFRs will be much more complicated than a straightforward administrative change in the benchmark rate. Adjustments will be needed to the pricing of transactions in order to minimise the economic impact of the transition, most likely by the inclusion of a “risk premium”.

The calculation of this risk premium is further complicated by the fact that the historical spread differential between the RFRs and their corresponding LIBOR rates has not been a fixed constant but has varied throughout the economic cycle. For instance, LIBOR spiked during the financial crisis in 2008 whereas modelling shows that many of the RFRs would have remained more stable.

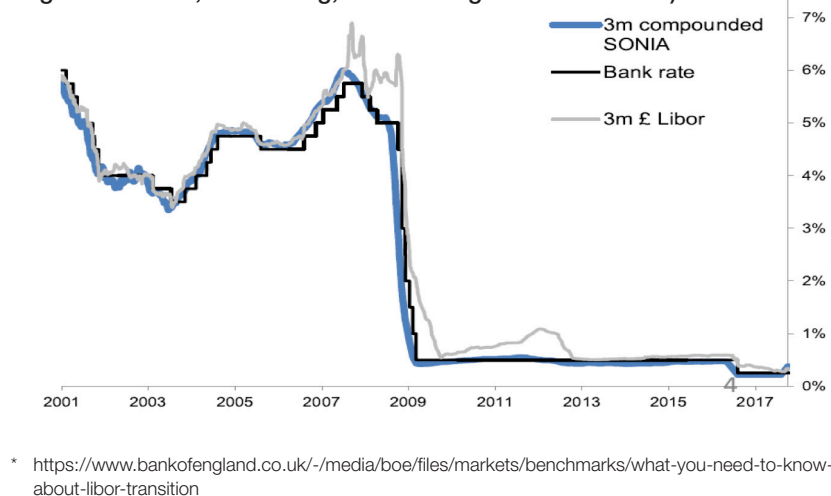
The different markets are looking at how to address this economic difference. In the derivatives market, for example, ISDA have consulted on methodology to be used to calculate the spread adjustment for certain existing benchmarks with the majority of respondents favouring the historical mean/median approach. The cash markets are currently waiting for a consultation on this topic. Given the number and value of contracts worldwide that reference LIBOR, any economic change as a result of the transition to RFRs would have significant consequences. It will be crucial that any risk premium that is included in contracts has broad market acceptance and does not result in the creation of “winners” and “losers” (which could in turn result in legal disputes). For borrowers, transparency around any pricing changes that are made will be vital.

Differences in the term of the rate

LIBOR is a forward-looking term rate, meaning that the rate of interest is fixed and publicly available at the beginning of each interest period and is quoted for a range of different maturities. Term rates allow corporates to manage their cashflow by providing them with advance visibility as to their financing costs.

By contrast, the RFRs that have been chosen as LIBOR alternatives are backward-looking overnight rates. This means that interest must be calculated daily on the basis of the relevant

Base Rate, 3m LIBOR, 3m compounded SONIA time series (source: Bank of England website, Bloomberg, Bank of England calculations)



overnight rate and, whether it is paid daily (which would clearly not be practical for cash products) or aggregated and paid at agreed intervals (such as monthly or quarterly), the parties cannot calculate the amount due in advance. This lack of visibility is problematic for certain cash products; in particular, loans. Treasurers may need to hold additional cash balances to cover any interest rate movements during an interest period, thus impacting their current cash management processes. Treasury management systems may also need to be updated to accommodate such a fundamental change.

A number of options have been considered as a way of dealing with these differences. Two of these options are forward-looking term rates and compounded overnight rates:

- *Forward-looking term rate based on OIS and futures markets* – As a result of feedback from participants in the cash markets who have been strongly in favour of the development of forward-looking rates, certain working groups have been actively considering creating term rates based on RFR-derivative markets (so called, RFR-derived term rates). However, regulators have made it clear that any such term rates would only be for use in certain markets (such as the cash markets) where they serve genuine risk management needs and potentially a small part of the derivatives market which directly hedges cash products, but not for the derivatives market more broadly.

“

The FSB recognises that in some cases there may be a role for term rates, including RFR-derived term rates, or term rates derived from other liquid markets.

”

FSB, 12 July 2018

This could result in a product by product split with the bulk of the interest rate derivatives market using overnight RFRs but with certain of the cash markets, such as the loan market (and potentially that section of the derivatives market which directly hedges those products), using RFR-derived term rates. As we will see, any bifurcation in approach between products in this area could result in basis risk. For this reason, borrowers may wish to ensure that different benchmarks are not referenced in cash products from the benchmarks referenced in the derivatives that are being used to hedge those cash products.

Even if markets such as the loan market do adopt RFR-derived term rates, there is no guarantee as to when such term rates will be available. It may also not be possible to develop term rates for all currencies as the OIS and futures markets for some currencies may not be sufficiently liquid. For instance, the National Working Group on CHF Reference Interest Rates has said that a robust derivatives-based term rate for Swiss Francs is not feasible.

- *Compounded overnight rates* – Compounded overnight rates involve the production of a “term” rate by compounding overnight RFRs over an interest period to produce a backward-looking rate. Compounded overnight rates are backward-looking and therefore not available at the start of an interest period.

In order to line up the necessary interest payments, borrowers would need to know the interest rate several business days in advance of the interest payment date. There are two main approaches to achieve this – the first is to fix the rate a few days before the end of the interest period. Alternatively, the reference period for interest rate calculations could start several business days before the beginning of, and end several business days before the end of, the relevant interest period (the so-called, “lag mechanism”).

The bond market has already started to use compounded rates in certain issuances. There had been

approximately £7 billion of SONIA-linked issuances by the end of 2018, all of which used a daily overnight compounding formula. The approach taken in the SONIA FRN market to date has been to use a 5-day lag mechanic so that the coupon amount is known 5 days before the payment date.

Compounded overnight rates have not yet been used in the loan market however the Working Group on Sterling RFRs is currently consulting on whether the compounded rate conventions used in the SONIA FRN market are suitable for use in the loan market. Similarly in the US, ARRC have published a user guide to help explain how a compounded SOFR rate can be used now in cash products without the need to wait for a forward-looking term rate.

Compounded overnight rates:

These rates involve compounding a series of overnight rates over a particular interest period to produce a rate at the end of the relevant interest period. Compounded rates do not give borrowers visibility at the start of an interest period of the cash interest payable at the end of such period.

It remains to be seen what solution(s) the markets implement but there is unlikely to be one single approach adopted across all of the various products and currencies in question. Corporates will therefore need to be prepared for product and currency fragmentation.

Operational differences

The transition from LIBOR to RFRs will impose new demands on market participants and their operational systems. Any operational changes will likely take a number of months to implement and could involve significant cost. However, it remains difficult for borrowers as well as banks and financial institutions to invest in the required upgrades without more clarity around certain key areas; for instance, whether there will be a forward-looking term rate for any of the LIBOR currencies and the market conventions for each LIBOR currency. When sufficient clarity is available, it is unlikely that all banks and financial institutions will be able to adjust at the same speed, resulting in possible market fragmentation.

What will currency and product fragmentation mean in practice?

Differences across products

The ubiquity of IBORs across different products and the close interrelationship between some of those products means that changes to particular products cannot be looked at in isolation. For instance, certain cash products are inextricably linked with the derivative instruments used to hedge FX or interest rate exposure under them. As we have seen, the various products are at different stages in the transition away from LIBOR and are adopting divergent approaches in certain areas. The concern is that any market fragmentation could lead to basis risk. Basis risk could arise if derivatives and their related cash products transition to RFRs at different times (for instance because they incorporate different fallback trigger events) and/or if cash products use term rates whereas the derivatives used to hedge them use overnight RFRs. The FCA has acknowledged that a small part of the derivatives market which hedges certain cash products may require a term rate for this very reason.

The potential for basis risk is of particular relevance for those corporates that currently make use of hedge accounting treatment. Any basis risk that arises where the benchmark referenced in the underlying product and the hedging instrument do not match will have an impact on the assessment that can be made of the effectiveness of that hedging instrument for hedge accounting purposes. That basis risk could be enough to cast doubt on the ability of some corporates to use hedge accounting going forward, with consequential impact on P&L volatility. Further, some areas in hedge accounting require forward-looking assessments to be undertaken in relation to forecast transactions, which may become more difficult as the date for LIBOR transition comes closer.

The IASB has acknowledged these concerns and tentatively decided in March of this year to propose amendments to IFRS Standards. These amendments focus on issues leading up

to IBOR reform and are intended to provide relief to allow hedge accounting to continue despite the transition. The second phase of the IASB project will focus on issues arising once IBORs have been reformed and contracts have been amended.

Differences across currencies

Many products such as loans incorporate multiple currencies within the same instrument, which leads to additional complexity if rates for different currencies were to transition at different times. To the extent amendments are required to contractual documentation, parties may have to wait until there is sufficient clarity in relation to all relevant currencies (not just the five LIBOR currencies but also any other relevant IBORs) before making such amendments. For new contracts, there may need to be a transition period where LIBOR is used for some currencies and RFRs for others, with all such rates being included in the same document.

There is unlikely to be a seamless one-size-fits-all solution, but a key challenge will be to ensure that the various replacement benchmarks and their associated methodology are capable of working together across (and within) products.

New financings and legacy debt – what approach is the market taking?

Loans

Loans – new financings

In contrast to the bond market, there are currently no known examples of new loans using RFRs as a benchmark rate. There is clearly more work that needs to be done to align RFRs to the needs of the loan market, particularly in relation to both forward-looking term rates and compounded overnight rates.

Working groups in both the US and the UK are encouraging participants to transition from LIBOR to the greatest extent possible, independently of the progress on the development of term rates and in connection with this are looking to raise awareness as to how the compounded overnight rate conventions used in the FRN market could be used now in the loan market. It remains to be

LMA revised “Replacement of Screen Rate” clause

This optional provision permits amendments to be made to facilitate the inclusion of a replacement benchmark and make related amendments in certain circumstances at a lower consent threshold than would otherwise be required.

Ultimate fallbacks in the event of a cessation of LIBOR:

- European LMA-style loans: individual lender's cost of funds, either on a lender-by-lender basis or on the basis of the weighted average of rates supplied.
- FRNs: the interest rate from the previous interest period.
- Derivatives: arithmetical mean of the rates quoted by major banks in the relevant market.

seen whether borrowers are willing to adopt the conventions used in the FRN market and, if so, how quickly those transitions could take place in light of operational and other impediments.

In the European market, the focus to date has been on increasing flexibility to agree amendments in the future, including by lowering the lender consent threshold to agree amendments to the relevant provisions. This is the approach taken by the LMA, which published a revised version of its "Replacement of Screen Rate" clause in May last year.

By contrast, in the US market, fallback language has been published that can be hardwired into documentation now, thus avoiding the need for amendments in the future. Following a consultation, the Alternative Reference Rates Committee (ARRC) (the working group tasked by the US Federal Reserve with finding a replacement for USD LIBOR) produced recommended language which hardwires which SOFR-based rates and spread adjustments apply if one of the prescribed benchmark transition trigger events occurs or if the parties elect to "opt-in" early. The first fallback would be a forward-looking term SOFR rate (which does not yet exist), followed by the term SOFR rate for the longest tenor that can be determined that is shorter than the applicable tenor, followed by a compounded SOFR rate and finally, borrower and agent determination. In each case, a credit spread designed to replicate the embedded term and credit spread within LIBOR would apply. This credit spread would be identified according to a waterfall (firstly, the spread adjustment which has been selected by the US Federal Reserve, or if that is not available, by ISDA).

ARRC also proposed an alternative approach (the so-called "amendment approach") which is similar to the LMA's revised "Replacement of Screen Rate" clause.

Feedback from the consultation was roughly evenly split between market participants favouring the hardwired approach and those favouring the amendment approach, although many respondents indicated they would prefer

the hardwired approach once more details of the fallback rates are available.

Loans – legacy financings

In the European market, many existing loan agreements that mature after 2021 contain LMA benchmark fallback provisions which apply in the event of a suspension of the LIBOR screen rate. However, these are intended to apply on a temporary basis only and are unlikely to be suitable if LIBOR is permanently discontinued, and may not be triggered at all if LIBOR continues to be published but is based on submissions from only a handful of panel banks (so-called 'Zombie LIBOR'). The benchmark fallback provisions operate differently in the loan and derivatives markets and those fallbacks may also be triggered at different times, resulting in potential basis risk for loans that are currently hedged.

In the US market, many LSTA-based syndicated loans fall back to the US Prime Rate if LIBOR ceases to be available. The US Prime Rate is generally significantly higher than LIBOR and therefore creates substantial credit risk for borrowers. Given this, the focus on providing a solution now is understandable.

Unlike hedging agreements (which can utilise ISDA amendment protocols), loan agreements cannot be amended wholesale so potential amendments must be addressed on a loan-by-loan basis. Unless the agreement contains the revised LMA "Replacement of Screen Rate" wording or similar language, it is likely that any amendment to LMA-based loans affecting the benchmark rate will require the consent of 100% of the lenders under the facility as a change in pricing is an all lender decision. Any consent process would have both time and cost implications.

Whilst some borrowers might feel that it is still too soon to make LIBOR-related amendments to their syndicated loans, if a loan agreement is to be amended for other reasons, consideration should be given to including provisions which would make future benchmark-related amendments easier, such as the revised LMA "Replacement of Screen Rate" wording or a derivation of it.

Bonds

Bonds – new financings

Several recent floating rate note transactions have already adopted RFRs in both the Sterling market (where a daily compounding formula was used) and in the dollar market (where a weighted average SOFR rate has been used). To date these issuances have been dominated by supranational and financial institution issuers rather than corporates. There are many reasons for this but corporate borrowers have never been heavy users of floating rate notes compared with the financial sector, and therefore the commercial pressure to embrace an early transition is more limited.

Until there is market consensus and a clear move in terms of available liquidity, the incremental investment costs and lack of cashflow certainty are likely to hold many borrowers back from moving to RFRs. The question remains whether the bond markets will embrace backward-looking term rates in line with the derivatives market and RFR transactions to date, or whether the term rate structure being developed in the loan markets would be a more favourable alternative for corporate bond issuers.

In the interim, we are seeing issuers include expanded fallback language to address a discontinuation of benchmark rates. This usually requires the issuer to appoint an independent adviser upon the occurrence of one or more triggers (i.e. the announcement of an actual, or upcoming cessation of the benchmark rate), who will consult with the issuer to determine the appropriate replacement benchmark rate, together with any required spread adjustment. Whilst these clauses have their limitations, notably the ability to find an appropriately skilled and willing expert to make the judgements and the fact that their determinations may remain controversial if there is significant value transfer, they are currently a pragmatic option given the surrounding uncertainties.

Bonds – legacy financings

In March 2018, ARRC estimated that 84% of dollar-linked floating rate notes (a total market size of c.US\$1.8 trillion) had

a maturity date falling before the end of 2021. It is therefore still a relatively small portion of outstanding U.S. dollar FRNs that are likely to be affected by benchmark reform and which do not already have some form of expanded fallback methodology to cater for a benchmark discontinuation. Nevertheless, the issues posed by these types of instruments are particularly intractable, given the default fallback language which is often included and the complexities around amending such instruments:

- *Default fallback language:* In most FRNs, if LIBOR ceases to be available for any protracted period the ultimate fallback is to the previous benchmark fixing, in effect locking in a fixed rate and converting the bond into a fixed rate obligation in perpetuity. This is an unintended consequence of most historic forms of fallback language, which were only ever expected to operate on a temporary basis. This is clearly unlikely to reflect the bargain that parties thought they were entering into and has the potential for significant value transfer (depending on the particular residual maturity and underlying rate cycle).
- *Amendment process:* Amending legacy contracts remains challenging because of the approval thresholds and procedural requirements of engaging with a group of public bondholders. Rising rates might suggest that it would be beneficial to an issuer to allow the rate to fix at the last available level, rather than launching an amendment process. However, there may be commercial or relationship reasons for offering a compromise to investors if the issuer wishes to maximise its market access in the future.

The costs of implementing an amendment process are not insignificant, and it is hoped that bond investors will be constructive given that this is an industry-wide problem. The question of whether issuers should be obliged to offer consent fees to encourage investors to agree benchmark-related changes, in line with common practice for other proposed amendments, remains particularly sensitive.

USD200 trillion

The notional value of financial contracts in the cash and derivatives markets which use USD LIBOR as a reference rate.

The Alternative Reference Rates Committee, September 2018



The biggest obstacle to a smooth transition is inertia – a hope that LIBOR will continue, or that work on transition can be delayed or ignored.



Andrew Bailey, Chief Executive of the FCA, July 2018

Derivatives

Derivatives – existing trades

The fallback provisions for derivatives transactions differ markedly from those for bonds and loans. In the 2006 ISDA Definitions, the fallbacks are triggered if, on any rate-setting date, the applicable IBOR does not appear on the specified screen on such date. In such circumstances, the calculation agent must obtain quotations from four major banks in the relevant interbank market for the rate at which such banks offer deposits in the applicable currency in the relevant interbank market. If insufficient quotations are forthcoming the calculation agent must then request quotations from major banks in the relevant market (e.g. London, New York, Eurozone) for loans advanced by such banks in the applicable currency to leading European banks. These fallback provisions do not provide a practical long-term solution to the cessation of any particular IBOR rate.

Revision of 2006 ISDA Definitions to reflect new RFRs

ISDA is currently working to amend the 2006 ISDA Definitions to implement fallbacks to an alternative RFR (subject to certain adjustments) for LIBOR and other key IBORs. To date, ISDA has published a revised definition of GBP-SONIA-COMPOUND, reflecting the changes to the determination of SONIA that came into force in April last year. It has also published a further supplement which defines a rate for a daily compound interest investment where the reference rate for the interest calculation is SOFR (“USD-SOFR-COMPOUND”). This second supplement also sets out a precise waterfall of fallbacks if SOFR or its replacement rate is not published or is no longer available; and a clear definition of a cessation of SOFR or one of the fallback rates.

ISDA Benchmark Supplement and Protocol

ISDA has produced a supplement (the ISDA Benchmarks Supplement) which is designed to give parties the ability to improve the contractual robustness of derivatives that reference interest rate, FX, equity and commodities benchmarks. The ISDA Benchmarks Supplement covers a much broader range of benchmarks than simply IBORs but it does allow market participants to agree interim fallback arrangements should an IBOR cease to exist before the IBOR fallbacks are fully implemented.

Market participants who choose to incorporate the ISDA Benchmarks Supplement in their ISDA documentation may agree to be bound by the terms of the ISDA Benchmarks Supplement either on a bilateral basis, or by signing up to the ISDA Benchmark Supplement Protocol. In both cases, parties can choose to apply the terms of the ISDA Benchmarks supplement either to future transactions alone or to both existing and future transactions.

What can corporate treasurers do now?






- Monitor developments closely – now that the 2021 deadline is coming into view, the pace of activity across the multitude of working groups and regulators is increasing.
- Develop a clear understanding of which products and transactions are affected by LIBOR, whether their maturity extends beyond 2021 and any interdependencies with other products. Depending on the organisation, this impact assessment may need to be widened beyond the core funding and treasury functions to include non-financial contracts, such as late payment clauses in commercial contracts, investment agreements and others.
- Review new and existing documentation that reference LIBOR to determine what fallbacks apply if a benchmark rate ceases to be available. Assess what level of consent would be required to replace a benchmark rate and make related changes. Discuss LIBOR transition with contract counterparties at an early stage.
- Consider the optimal timing for amending any existing products in light of overall market conditions, borrower-specific circumstances and working group milestones.
- Given the breadth of application of LIBOR, it will be important for companies to remain coordinated internally. The FCA's recent 'Dear CEO' letters require banks to nominate a named individual with responsibility for LIBOR transition within their organisation – it may be prudent for companies to adopt a similar approach.
- Monitor any developments from the IASB in relation to hedge accounting changes.
- To the extent amendments are being made to existing contracts which reference LIBOR for other reasons, consider including provisions which would make future benchmark-related amendments easier.
- Engage in the debate via working groups and industry associations such as the ACT. The discussion around the case for a risk-free term rate is an encouraging example of market concerns contributing to shape the wider efforts around LIBOR transition.

Conclusion

While the end of 2021 may seem far away, the magnitude of the transition away from LIBOR and its potential impact on the financial markets cannot be underestimated. Corporate treasurers should start taking action to prepare for this change as soon as possible.



ANNEX – OVERVIEW OF PREFERRED REPLACEMENT RATES

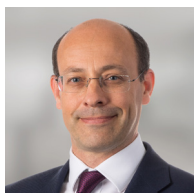
Currency	Sterling 	U.S. dollars 	Japanese yen 	Swiss franc 	Euro 
Alternative Reference Rate	Reformed SONIA (Sterling Overnight Index Average)	SOFR (Secured Overnight Financing Rate)	TONAR (Tokyo Overnight Average Rate)	SARON (Sales Average Rate Overnight)	€STR (European Short-Term Euro Rate) – alternative rate to EONIA
Administrator	Bank of England	Federal Reserve Bank of New York	Bank of Japan	SIX Exchange	European Central Bank
Working Group	Working Group on Sterling Risk-Free Reference Rates	Alternative Reference Rates Committee (ARRC)	Study Group on Risk-Free Reference Rates	National Working Group on Swiss Franc Reference Rates	Working Group on Risk-Free Reference Rates for the Euro Area
Secured?	✗	✓	✗	✓	✗
Publication time	09:00 GMT, T+1	08:00 ET, T+1	10:00 JST, T+1	12:00, 16:00 and 18:00 CET, same day	09:00 CET, T+1
Description	Unsecured overnight rate based on the rate at which interest is paid on sterling short-term wholesale funds where credit, liquidity and other risks are minimal	Secured rate based on transactions in the US Treasury repo market	Unsecured rate based on uncollateralised overnight call rate market transactions	Secured rate based on data from the Swiss repo market	Unsecured rate to reflect wholesale euro unsecured overnight borrowing transactions with financial counterparties
Overnight Rate Available?	✓	✓	✓	✓	✗ October 2019
Term Rate Available?	✗ Planned H2 2019	✗ Planned 2021	✗ Under consideration	✗ A robust derivatives-based term rate is unlikely to be feasible	✗ Under consultation

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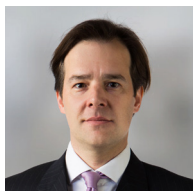
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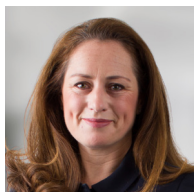


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Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.