

The Discontinuation Of LIBOR - The Top Five Things Investment Managers Should Consider

First published on January 1, 1986, the London Interbank Offering Rate (“LIBOR”), has been the dominant reference rate for most adjustable-rate financial products since nearly the same time. Due to interest rate manipulation stemming back to as early as 2003, LIBOR will be discontinued, on December 31, 2021. Approximately \$350 trillion worth of financial contracts reference LIBOR globally. For investment managers, the transition away from LIBOR has the potential to be impactful.

In June 2017, U.S. Federal Reserve Bank’s Alternative Reference Rates Committee (“ARRC”) selected the Secured Overnight Financing Rate (“SOFR”) as the preferred alternative rate to LIBOR. ARRC had noted the stability of the repurchase market on which the rate is based. As its name suggests, SOFR varies from LIBOR in two major ways – it is based on U.S. Treasury-backed repurchase transactions, whereas LIBOR is unsecured, and it is an overnight-only rate, whereas LIBOR is published for different maturities (overnight/spot, one-week, one-month, two-months, three-months, six-months and twelve-months).

On July 12, 2019, the U.S. Securities and Exchange Commission (the “SEC”) issued a statement on the LIBOR transition, indicating the significant impact that the discontinuation of LIBOR could have on financial markets and market participants. The Division of Investment Management in its division specific guidance focused investment companies and investment managers on the possible impact on the functioning, liquidity and value of investments and the disclosure of such risks to investors.

Investment managers, if they have not already begun, should internally, or with the assistance of counsel, take the following steps:

1. Identify and inventory instruments referencing LIBOR, such as floating rate debt, bank loans, LIBOR-linked derivatives, and certain asset-backed securities, held in client accounts, together with other potential impacts such as, direct lending by funds with contracts which do not address the discontinuation of LIBOR and extend past 2021 and exemptive orders that reference LIBOR (such as certain inter-fund lending

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orders).

2. Assess the impact the discontinuation of LIBOR will have on these investments, agreements and arrangements (e.g., investments without reference rate fallback language, or with fallback language that does not contemplate the discontinuation of LIBOR, could become less liquid and/or change in value as the date approaches when LIBOR will no longer be updated).
3. Develop an action plan for selecting an appropriate alternative reference rate, assessing the impact of that reference rate on operations, financial statements, risks, profitability and costs, and updating existing contracts and documentation, as well as templates, accordingly.
4. Develop policies and procedures which will govern the transition away from LIBOR and amend existing policies and procedures which will be impacted by the same. For example, investment companies will wish to revisit their liquidity risk management programs to ensure compliance with Rule 22e-4 under the Investment Company Act of 1940.
5. Develop additional or enhanced risk disclosures relating to the transition away from LIBOR to be made to investors and clients as appropriate. The SEC staff encourages affected investment funds to provide investors with tailored risk disclosure that specifically describes the impact of the transition on their holdings.

Investment managers, whether or not investing in instruments referencing LIBOR, will need to be prepared. Investment risk, as well as the risk of litigation, warrant looking at these issues in a timely manner. Dorsey offers cost-effective document review solutions through its [LegalMine™ Practice Group](#), a state-of-the-art document review service, which we can bring to bear in support of your analysis and remediation efforts. Please do not hesitate to call us with any questions.

See other alerts related to the Transition Away from LIBOR:

[What the LIBOR Phase-out Means for Debt Capital Market Participants](#)

[SEC Staff Publishes Statement on Risks of Transition Away from LIBOR](#)

[Preparing for LIBOR Substitution-Commercial and Consumer Lending Considerations](#)