

## **Cessation of Finance House Base Rate | Publication of eight-week average of 3 month Sterling LIBOR, rounded up to the next half point**

### *Introduction and background*

This note informs the Finance & Leasing Association's (**FLA**) members and others that the FLA will cease to publish the Finance House Base Rate (**FHBR**) and advises those who have entered into or acquired contracts which reference FHBR to consider, in advance of this, how FHBR ceasing to exist might affect those contracts.

FHBR is a rate which is calculated by the FLA on a monthly basis by averaging 3 month Sterling LIBOR over the previous eight weeks, with the resulting figure then rounded up to the next half point. The process is entirely arithmetical and contains no discretionary element. It is calculated on the last Friday of each month and the resulting figure becomes effective from the first day of the following month.

With effect from 1 January 2020, the FLA proposes to calculate and publish a mathematical adjustment to 3 month Sterling LIBOR (described in more detail below), as a service to members and others who wish to reference LIBOR with this adjustment in their contracts but do not wish to perform the calculation themselves.

### *Why is this change happening?*

The cessation of FHBR follows the introduction of the EU's Benchmarks Regulation. The Benchmarks Regulation applies to certain indices, including those by reference to which amounts payable under consumer credit agreements and regulated mortgage contracts are determined. Among other things, the Benchmarks Regulation requires a benchmark administrator located in the EU to be authorised by its national regulator and imposes regulatory requirements on benchmark administrators.

Following extensive consideration of the Benchmarks Regulation and of the potential impact on the FLA of becoming an authorised benchmark administrator, including taking legal advice and holding discussions with the Regulator, the FLA has concluded that it is not practical or feasible for the FLA to become an authorised benchmark administrator. The FLA has no control over the underlying index (3 month Sterling LIBOR) or the methodology for its calculation and LIBOR itself is administered by an authorised benchmark administrator, ICE Benchmark Administration. The FLA will, therefore, stop calculating and publishing FHBR to ensure that it avoids any requirement to become an authorised benchmark administrator.

### *What is happening, and when?*

FHBR will cease to exist, and will not be published, after 31 December 2019. This is to ensure that the FLA does not fall within the scope of the Benchmarks Regulation following the expiry of certain transitional provisions on 31 December 2019.

### *Will there be a replacement rate?*

FHBR will cease to exist, and will not be published, after 31 December 2019. In order to ensure that the FLA does not fall within the scope of the Benchmarks Regulation, the FLA is not able to calculate and publish any replacement rate.

With effect from 1 January 2020, the FLA proposes to calculate an adjustment to 3 month Sterling LIBOR and publish this on a monthly basis as a service to members and others who wish to reference LIBOR with this adjustment in their contracts but do not wish to perform the calculation themselves. This adjustment will be calculated by averaging 3 month Sterling LIBOR over the previous eight weeks, with the resulting figure then rounded up to the next half point. The calculation of the adjustment will be entirely arithmetical and will contain no discretionary element. It will be calculated and published by the FLA on the last Friday of each month.

Whilst the adjustment to LIBOR which the FLA proposes to calculate and publish from 1 January 2020 is identical to the calculation which is currently used to calculate FHBR, the FLA's understanding of the current regulatory approach to the implementation of the Benchmarks Regulation is that calculating and publishing such an adjustment to LIBOR would not require the FLA to obtain authorisation as a benchmark administrator.

FLA members and others should be aware that, if the FLA were advised that calculating and publishing such an adjustment to LIBOR would bring the FLA within the scope of the Benchmark Regulation, the FLA would propose to stop calculating and publishing such an adjustment.

*What does this mean for FLA members and others?*

FHBR provides a base on which to calculate lending charges in certain commercial and consumer finance contracts. It is used by both FLA members and non-members.

FLA members and others who enter into or acquire, or have entered into or acquired, contracts which reference FHBR or who reference FHBR in the calculation of lending charges should consider how FHBR ceasing to exist after 31 December 2019 will affect those contracts. Whilst they should take their own detailed legal and other advice, particular points that they may wish to consider are:

- *How should references to FHBR be interpreted when it ceases to exist after 31 December 2019?*

Members and others may wish to consider whether contracts allow the lender to substitute a rate or perform a calculation to determine the rate or whether the contract sets out any fallback rate which should be used if FHBR ceases to exist.

The wording in some contracts may be wide enough to allow an adjustment to LIBOR such as that which the FLA proposes to publish from 1 January 2020 to be used. However, FLA members and others will need to review their contracts and take their own advice as appropriate.

- *If current references in contracts are not wide enough to allow the substitution of an alternative rate or an alternative calculation to be used, can the contract be varied?*

Where references to FHBR in contracts is not wide enough to cover a replacement rate or calculation, FLA members and others who use FHBR in their contracts may wish to consider whether they have the power to vary their contracts to replace the current references with a wider definition.

The ability to do this, the circumstances in which any power to vary a contract can be exercised – as well as the length of any notice which must be given to borrowers - will depend on the terms of the underlying contract. FLA members and others will need to consider this based on their particular circumstances and take any appropriate advice.

If FLA members and others decide to vary their contracts, they may also wish to include changes to cater for any discontinuation of LIBOR as described below.

- *Should new contracts refer to FHBR?*

FHBR will cease to exist after 31 December 2019. Contracts referencing FHBR should not be entered into from 1 January 2020 because they would refer to a rate which will no longer exist. Firms which currently enter into contracts which reference FHBR should consider varying their contracts ahead of 31 December 2019.

It is likely, as set out in our [separate briefing](#), that in the future LIBOR will no longer be calculated and published. FLA members and others may wish to take this into account when reviewing their contracts and consider if any changes should be made. They should also note comments made by the FCA suggesting that firms should plan early for any possible discontinuation of LIBOR.

- *How will this affect firms who are supervised entities under the Benchmarks Regulation?*

The Benchmarks Regulation imposes certain requirements on supervised entities who use benchmarks within the meaning of the Benchmarks Regulation. These include limiting the benchmarks which they may use to those provided by an administrator authorised under the Benchmarks Regulation or certain third country benchmarks which are listed in a register maintained by the EU authorities and a requirement to produce and maintain robust written plans detailing the actions that will be taken if a benchmark they use materially changes or ceases to be provided.

FLA members and others should be aware that the FLA is not, and will not be, an authorised administrator under the Benchmarks Regulation, and will cease to publish FHBR after 31 December 2019. Whilst the FLA's understanding of the current regulatory approach is that the adjustment to LIBOR which the FLA proposes to calculate and publish from 1 January 2020 will not in itself be a "benchmark" for the purposes of the Benchmarks Regulation, FLA members and others who wish to make use of the calculation will need to take their own legal and other advice on this question.

If you have any questions about the cessation of FHBR please contact Geraldine Kilkelly, FLA's Head of Research and Chief Economist, at [geraldine.kilkelly@fla.org.uk](mailto:geraldine.kilkelly@fla.org.uk).

**Whilst the FLA has taken reasonable care to ensure that the information in this communication is accurate, it is provided for general information purposes only. FLA members and others should take their own legal advice where appropriate and no person should rely on the information in this communication. The FLA accepts no liability in respect of any loss or damage which may arise in connection with the use or reliance on the information in this communication.**