

Out with the Old (LIBOR) and Out with the New (BSBY)? Another Rate Bites the Dust

November 30, 2023 Brian Sung, Isabella Shaw

PRACTICES Fund Finance, Finance, Derivatives

Just when everyone thought the market was reaching a point of stasis on the nearly decade-long¹ LIBOR transition process, Bloomberg Index Services Limited (“**BSL**”), the administrator of the Bloomberg Short-Term Bank Yield Index (“**BSBY**”), announced on November 15, 2023 that the *permanent cessation* of the BSBY index and all tenors of BSBY will be effective on **November 15, 2024**.² Such announcement comes following BSL’s consultation with the BSBY Oversight Committee and the BSL board of directors. The consultation cites BSBY’s limited use within financial products and a projection that its use is unlikely to increase significantly in the future as the determining factors for the decision.³ Of particular note for market participants (and especially for legal practitioners) is that BSL will *not* be recommending a fallback replacement rate for BSBY.

BSBY has been published since March 2021 as part of the transition away from LIBOR to alternative reference rates. In contrast to the Secured Overnight Financing Rate (“**SOFR**”), which is calculated based on overnight secured Treasury repo rates, BSBY provided market participants with an alternative rate that incorporated a credit sensitivity element (analogous to LIBOR’s interbank lending rate), as BSBY is calculated based on observed yields on short term credit-sensitive funding (including commercial paper, CDs, bank deposits and short-term bonds).⁴ During the early stages of LIBOR transition prior to development of a Term SOFR rate, BSBY also had the advantage of offering both an overnight rate and one-, three-, six-, and 12-month term tenors. Consequently, certain market participants viewed BSBY as a desirable rate, and the Loan Syndications & Trading Association (“**LSTA**”) and the International Swaps and Derivatives Association (“**ISDA**”) even developed BSBY-based fallback provisions to facilitate the use of BSBY on floating rate loans and derivatives transactions.

However, after the Alternative Reference Rates Committee (“**ARRC**”) formally recommended Term SOFR in July 2021 for use in U.S. Dollar floating rate financing transactions,⁵ Term SOFR (or other SOFR rates) established a dominant position in U.S. Dollar floating rate credit facilities (as the active or primary fallback rate). In fact, of the fund finance facilities that Haynes Boone documented over the past two years, SOFR (Term and/or Daily) has been the main rate for U.S. Dollar borrowings, with less than 7% of such facilities including BSBY as a benchmark. And, of that small subset, 44% also had at least one SOFR rate as an additional option for borrowers.

As with the transition away from LIBOR, market participants with BSBY as an active rate in their loan documentation or derivative transactions should start thinking about the best way to implement a smooth transition by **November 15, 2024**. During the LIBOR transition process, active and early dialogue with borrowers was critical. Since many market participants are both familiar and comfortable with SOFR, conversations regarding BSBY transition are unlikely to be lengthy. Additionally, given that BSBY was adopted in the wake of LIBOR transition, the relevant loan documentation or ISDA provisions most likely already have some form of benchmark replacement provisions built in to accommodate the transition away from BSBY. Such provisions could potentially be relied upon to handle the transition, and impacted market participants should

familiarize themselves with any such provisions and engage in early dialogue with both internal and external counsel to discuss and understand their options and to determine the most efficient way to prepare for and effectuate the transition.

As part of the BSBY transition, ISDA issued a guidance note on November 20, 2023, indicating that BSL's announcement of the future cessation of BSBY constitutes an "Index Cessation Event" for purposes of the 2021 ISDA Interest Rate Definitions, the 2006 ISDA Definitions and the 2018 ISDA Benchmarks Supplement and, as such, the existing index cessation fallback provisions thereunder should apply in connection with the related "Index Cessation Effective Date". On the financing side, the LSTA published a brief note on November 29, 2023 about the BSBY cessation announcement,⁶ but with the ARRC having formally disbanded at its November 8, 2023 meeting,⁷ a formal statement indicating that this was a "Benchmark Transition Event" under ARRC/LSTA style benchmark replacement provisions may not be forthcoming.

While the cessation of BSBY will certainly be impactful for some, we expect the flurry of activity in the marketplace to be significantly less than what was observed over the last five years during the transition away from LIBOR. We attribute this to both the lower volume of current BSBY transactions that will need to transition and to the significant amount of work done by trade associations and other industry and regulatory bodies to develop the infrastructure for future rate transitions. We also expect the BSBY transition process to be less painful since market participants have now lived through one cycle of a benchmark transition.

For more information or questions on the matters covered in this alert, please contact any of the authors or any other member of our [Finance Practice Group](#).

¹ *About*, Alternative Reference Rates Committee, available [here](#).

² *Future Cessation of the Bloomberg Short-Term Bank Yield Index ("BSBY")*, Bloomberg (Nov. 15, 2023), available [here](#).

³ *Consultation on the Proposed Cessation of the Bloomberg Short-Term Bank Yield Index ("BSBY")*, Bloomberg (Sept. 13, 2023), available [here](#).

⁴ *BSBY: Bloomberg Short-Term Bank Yield Index*, Bloomberg (Oct. 25, 2021), available [here](#).

⁵ *ARRC Formally Recommends Term SOFR*, Alternative Reference Rates Committee (Jul. 29, 2021), available [here](#).

⁶ Tess Virmani, *Bye-Bye, BSBY*, LSTA (Nov. 29, 2023), available [here](#).

⁷ *November 8 Meeting Readout*, Alternative Reference Rates Committee (Nov. 8, 2023), available [here](#).