

HERBERT SMITH FREEHILLS RESPONDS TO ISDA DECISION TO RE-CONSULT ON PRE-CESSATION FALLBACKS

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Firm news

Responding to news that the International Swaps and Derivatives Association (ISDA) has announced that it will re-consult on how to implement pre-cessation fallbacks, Rupert Lewis, head of banking litigation in Herbert Smith Freehills' disputes practice, says that "the plan to re-consult on pre-cessation fallbacks is an important development for financial institutions with large books of legacy LIBOR-linked products."

He comments:

"It reflects another attempt to achieve market consensus on whether and how to include a pre-cessation trigger into ISDA's suite of documents. It follows quickly on the back of clarification from the FCA and ICE that markets should expect a non-representative LIBOR to be published only for "months, not years".

"From a litigation risk perspective, a single protocol is likely to avoid different contracts switching away from LIBOR at different times, creating mismatches between different parts of a portfolio.

"However, if such a consensus is reached, some market participants may be concerned at the loss of flexibility in how to address LIBOR cessation across the entirety of their contracts. Moreover, the decision to re-consult will mean delay to amendments to crucial changes to the ISDA documentation which were supposed to be published in the first half of 2020. With end-2021 and the end-game for LIBOR fast approaching, this delay is frustrating for market participants who are trying to get to grips with the changes they need to make to their legacy contracts, particularly financial institutions with large volumes to tackle."

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