

For the avoidance of doubt, this Users Guide, the Revised Replacement of Screen Rate Clause, the Primary Documents and the Leveraged Document are in a non-binding, recommended form. Their intention is to be used as a starting point for negotiation only. Individual parties are free to depart from their terms and should always satisfy themselves of the regulatory implications of their use.



## THE RECOMMENDED REVISED FORM OF REPLACEMENT SCREEN RATE CLAUSE AND USERS GUIDE

~~16 OCTOBER~~ 21 DECEMBER 2018

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## IMPORTANT NOTICE

- This Users Guide has been prepared for the Loan Market Association ("LMA") in connection with the revised recommended form of replacement of screen rate Clause (the "**Revised Replacement of Screen Rate Clause**"). Whilst every care has been taken in the preparation of this Users Guide and the Revised Replacement of Screen Rate Clause, no representation or warranty is given by the LMA or Clifford Chance LLP:
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- For the avoidance of doubt, this Users Guide and the Revised Replacement of Screen Rate Clause are in a non-binding, recommended form. Their intention is to be used as a starting point for negotiation only. Individual parties are free to depart from their terms and should always satisfy themselves of the regulatory implications of their use.
- This Users Guide and the Revised Replacement of Screen Rate Clause have also been made publicly available by the Bank of England's Working Group on [Sterling Risk-Free Reference Rates](#).

## INTRODUCTION AND SCOPE

- This Users Guide provides a revised form of drafting of a "replacement of screen rate clause" (the "**Revised Replacement of Screen Rate Clause**") for users of the LMA's senior facilities agreement for leveraged acquisition finance transactions (senior / mezzanine) (the "**Leveraged Document**") and the LMA's recommended form of syndicated facility agreements (the "**Primary Documents**") together with instructions on how to insert the Revised Replacement of Screen Rate Clause into the relevant document. The Revised Replacement of Screen Rate Clause can also be adapted for use in conjunction with the LMA's other recommended forms of facility agreement.
- This Users Guide is divided into the following sections
  - Section 1 contains an overview of the Revised Replacement of Screen Rate Clause.
  - Section 2 contains a form of Revised Replacement of Screen Rate Clause for use in conjunction with the Leveraged Document.
  - Section 3 contains a form of Revised Replacement of Screen Rate Clause for use in conjunction with the Primary Documents.
- The extent to which the Revised Replacement of Screen Rate Clause is or is not included on any specific transaction is a commercial matter for users and is likely to be dependent on the size and composition of the Lender group. **The LMA makes no recommendation as to the extent to which the Revised Replacement of Screen Rate Clause is or is not used on any particular transaction.**

## SECTION 1 INTRODUCTION TO THE REVISED REPLACEMENT OF SCREEN RATE CLAUSE

### 1. INTRODUCTION

#### 1.1 The Revised Replacement of Screen Rate Clause

- (a) Following the announcement by Andrew Bailey (Chief Executive of the UK's Financial Conduct Authority (the "FCA")) that the FCA will no longer compel or encourage panel banks to provide quotations for the purposes of calculating LIBOR after 2021, it has become possible that LIBOR may cease to be published or that parties may wish to use another benchmark rate in its stead.
- (a) In relation to EURIBOR, this is currently undergoing a process of reform so that it is based on transactions to the extent possible. This is being done with a view to obtaining authorisation under the EU Benchmarks Regulation by 1 January 2020. The European Central Bank and other European regulators are working on proposals for fallbacks to EURIBOR should such authorisation not be achieved.
- (b) Whilst the financial markets are considering potential replacement benchmark rates for LIBOR and EURIBOR, it is difficult to specify drafting for such rates and therefore parties are looking to include additional flexibility to make the process of amending documents at the appropriate time in the future easier.
- (c) Since November 2014, the Primary Documents and the Leveraged Document have included an optional "replacement of screen rate" clause. This clause qualifies the "All Lender matters" clause by providing that if a Screen Rate is unavailable any amendment replacing that Screen Rate may be made with Majority Lender and Obligor consent. The Primary Documents also contain a further optional provision which disenfranchises any Lender that fails to respond within a specified time-frame to a request to such an amendment (the notes to the Leveraged Document also recommend considering including such a provision where the snooze/lose provisions in paragraph (b) of Clause 42.7 (*Excluded Commitments*) are not included).
- (d) In order to facilitate further flexibility than the existing clause allows, the Revised Replacement of Screen Rate Clause was developed in conjunction with members of the LMA and the Association of Corporate Treasurers (including lenders, borrowers and major law firms). The Revised Replacement of Screen Rate Clause permits amendments to be made to documents with a lower consent threshold than may otherwise be required in a wider range of circumstances than the existing clause.

#### 1.2 Slot-in drafting

Given the optional nature of the Revised Replacement of Screen Rate Clause and the potential for further drafting to be generated in due course to facilitate inclusion into the Primary Documents and the Leveraged Document of any replacement or additional benchmark rates, the Revised Replacement of Screen Rate Clause has at this stage been

made available in a freestanding "slot-in" format to allow parties to include it to the extent appropriate.

## **2. OVERVIEW OF THE REVISED REPLACEMENT OF SCREEN RATE CLAUSE**

### **2.1 Application**

- (a) The clause applies where a replacement (or additional) benchmark rate is contemplated and facilitates amendments to be made to incorporate use of that benchmark rate into the documentation.
- (b) Users should consider whether it is appropriate for the provisions of the clause to operate only upon the occurrence of a trigger event – a "Screen Rate Replacement Event". This may depend on the composition of the lending groups.
- (c) Users should further consider the consent level that is appropriate in the context of the lending group. Whilst Majority Lender consent may be appropriate, in some circumstances and given the nature of the amendments which may need a consideration of the pricing implications, a higher threshold may be considered.

### **2.2 Flexibility**

The main purpose of the clause is to provide the Parties with greater flexibility to make amendments with a lower consent level than would otherwise be required. In this respect, it allows amendments to be made to facilitate inclusion of a replacement benchmark which:

- (a) is formally selected as a replacement for LIBOR by the LIBOR administrator or by an appropriate regulator; or
- (b) is otherwise accepted by the relevant markets; or
- (c) is deemed appropriate by the requisite majority of Lenders and the Obligors.

### **2.3 ISDA/Other markets**

- (a) The drafting of the Revised Replacement of Screen Rate Clause is mindful of the ISDA Benchmarks Supplement, particularly in the definition of "Screen Rate Replacement Event" where trigger events relating to the cessation of a benchmark are set out. However, given the needs of different documentation and markets, the wording is not identical.
- (b) Users should consider the Revised Replacement of Screen Rate Clause in the context of similar provisions for related transactions in other markets and amend as necessary to ensure that they co-exist without inconsistency.

## 2.4 **Costs of amendments**

Users may want to consider allocation of responsibility for the costs and expenses relating to any amendment or waiver contemplated by the Revised Replacement of Screen Rate Clause.

**SECTION 2**  
**FORM OF REVISED REPLACEMENT OF SCREEN RATE CLAUSE FOR USE IN CONJUNCTION WITH THE LEVERAGED DOCUMENT**

**1. INTRODUCTION**

This Section contains a form of Revised Replacement of Screen Rate Clause for use in conjunction with the Leveraged Document, and instructions on how to insert the Revised Replacement of Screen Rate Clause into the Leveraged Document.

**2. ADDING THE REVISED REPLACEMENT OF SCREEN RATE CLAUSE TO THE LEVERAGED DOCUMENT AND THE LMA INTERCREDITOR**

The Revised Replacement of Screen Rate Clause has been drafted so that the provisions are contained in a single clause that can simply be inserted into the Leveraged Document.

**2.1 Amendments to Leveraged Document**

- (a) Delete Clause 42.5 (*Replacement of Screen Rate*) and substitute with the text overleaf.



## 42.5 *[Replacement of Screen Rate*<sup>1</sup>

*Subject to paragraph (a) of Clause 42.4 (Other exceptions)<sup>2</sup>, [if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for a currency which can be selected for a Loan,]<sup>3</sup> any amendment or waiver which relates to:*

- (a) *providing for the use of a Replacement Benchmark [in relation to that currency in place of that<sup>4</sup> Screen Rate]<sup>5</sup>; and*
- (b)
  - (i) *aligning any provision of any Finance Document to the use of that Replacement Benchmark;*
  - (ii) *enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);*
  - (iii) *implementing market conventions applicable to that Replacement Benchmark;*
  - (iv) *providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or*
  - (v) *adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),*

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<sup>1</sup> Users should consider this language in the context of similar provisions for related transactions in other markets (for example, related hedging transactions) and amend as necessary to ensure that they co-exist without inconsistency. In the Leveraged Document, "Screen Rate" is a defined term which sets out, in relation to a relevant benchmark rate e.g. LIBOR, the administrator of the rate and the screen or other public source on which the rate can be found.

<sup>2</sup> Clause 42.4 (*Other exceptions*) of the Leveraged Document provides that an amendment or waiver which may affect the rights or obligations of an administrative party (such as the Agent or Arranger) cannot be made without the consent of that party.

<sup>3</sup> Users should include if it is appropriate that the provisions of this clause operate upon the occurrence of a trigger event.

<sup>4</sup> Users should consider whether there might be situations in which parties may want flexibility to retain the ability to use either the existing Screen Rate or the Replacement Benchmark on transactions. If this is the case, delete "that" and substitute "(or in addition to) the affected" here.

<sup>5</sup> Users should include if it is appropriate that the provisions of this clause operate upon the occurrence of a trigger event.

may be made with the consent of the Agent (acting on the instructions of the [Majority Lenders]<sup>6</sup>) and the Parent.<sup>7</sup>

**"Relevant Nominating Body"** means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

**"Replacement Benchmark"** means [ ]<sup>8</sup>/[a benchmark rate which is:

- (a) *formally designated, nominated or recommended as the replacement for a Screen Rate by:*
  - (i) *the administrator of that Screen Rate [(provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate)]; or*
  - (ii) *any Relevant Nominating Body,*  
*and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;*
- (b) *in the opinion of the [Majority Lenders]<sup>9</sup> and the Parent, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or*
- (c) *in the opinion of the [Majority Lenders]<sup>10</sup> and the Parent, an appropriate successor to a Screen Rate.]*

**["Screen Rate Replacement Event"** means, in relation to a Screen Rate:

- (a) *the methodology, formula or other means of determining that Screen Rate has[, in the opinion of the [Majority Lenders],<sup>11</sup> and the Parent] materially changed;*
- (b)
  - (i)
    - (A) *the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or*

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<sup>6</sup> Users should insert the consent level that is appropriate in the context of the composition of the lending group ("Majority Lenders" is defined in the Leveraged Document as, in short, Lenders representing [66 $\frac{2}{3}$ ]% of the total commitments).

<sup>7</sup> If the snooze/lose concept set out in paragraph (b) of Clause 42.7 (*Excluded Commitments*) of the Leveraged Document is not included consider whether such a concept should apply to this Clause 42.5 (*Replacement of Screen Rate*).

<sup>8</sup> Insert details of any specified pre-agreed replacement benchmark.

<sup>9</sup> Users should insert the consent level that is appropriate in the context of the composition of the lending group.

<sup>10</sup> Users should insert the consent level that is appropriate in the context of the composition of the lending group.

<sup>11</sup> Users should insert the consent level that is appropriate in the context of the composition of the lending group.

(B) *information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,*

*provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;*

(ii) *the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;*

(iii) *the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or*

(iv) *the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or*

(c) *[the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:*

(i) *the circumstance(s) or event(s) leading to such determination are not (in the opinion of the [Majority Lenders] and the Parent) temporary; or*

(ii) *that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the period opposite that Screen Rate in Schedule [20] (Screen Rate contingency periods)]<sup>12</sup>; [or]*

(d) *[in the opinion of the [Majority Lenders]<sup>13</sup> and the Parent, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.]]*

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<sup>12</sup> Note: the Screen Rate administrators (for LIBOR and EURIBOR) have reduced submissions/fallback policies which could be triggered if fewer than the usually required number of banks contributed submissions for the calculation of the relevant rate. These policies generally prescribe that their use would be published by the administrator either on the relevant screen page or (in the case of LIBOR) as the administrator deems appropriate.

<sup>13</sup> Users should insert the consent level that is appropriate in the context of the composition of the lending group.

- (b) Insert the overleaf Schedule 20 (*Screen Rate contingency periods*) after Schedule 19 (*Form of Incremental Facility Lender Certificate*).

**SCHEDULE 20**

**Screen Rate contingency periods**

<b>Screen Rate</b>	<b>Period</b>
<i>LIBOR</i>	[ ]
<i>EURIBOR</i>	[ ]

**SECTION 3**  
**FORM OF REVISED REPLACEMENT OF SCREEN RATE CLAUSE FOR USE IN**  
**CONJUNCTION WITH THE PRIMARY DOCUMENTS**

**1. INTRODUCTION**

- (a) This Section contains a form of Revised Replacement of Screen Rate Clause for use in conjunction with the Primary Documents, and instructions on how to insert the Revised Replacement of Screen Rate Clause into the Primary Documents.
- (b) References in this Section are to the multicurrency term and revolving facilities agreement issued in ~~July 2017~~December 2018 and all cross references in this Section are to clauses in that agreement. However, the Revised Replacement of Screen Rate Clause can be added to any of the Primary Documents, with appropriate amendments to reflect, for example, whether the relevant agreement contains more than one facility, incorporates an LMA Swingline Facility, incorporates an LMA Letter of Credit Facility or is a single currency or multicurrency facility.

**2. ADDING THE REVISED REPLACEMENT OF SCREEN RATE CLAUSE TO THE PRIMARY DOCUMENTS**

The Revised Replacement of Screen Rate Clause has been drafted so that the provisions are contained in a single clause that can simply be inserted into the relevant Primary Document.

**2.1 Amendments to Primary Document**

- (a) Delete Clause 35.4 (*Replacement of Screen Rate*) and substitute with the text overleaf.

#### 35.4 *[Replacement of Screen Rate]*<sup>14</sup>

- (a) *Subject to Clause 35.3 (Other exceptions)*<sup>15</sup>, *[if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for a currency which can be selected for a Loan,]*<sup>16</sup> any amendment or waiver which relates to:
- (i) *providing for the use of a Replacement Benchmark [in relation to that currency in place of that]*<sup>17</sup> *Screen Rate]*<sup>18</sup>; and
  - (ii)
    - (A) *aligning any provision of any Finance Document to the use of that Replacement Benchmark;*
    - (B) *enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);*
    - (C) *implementing market conventions applicable to that Replacement Benchmark;*
    - (D) *providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or*
    - (E) *adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),*

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<sup>14</sup> Users should consider this language in the context of similar provisions for related transactions in other markets (for example, related hedging transactions) and amend as necessary to ensure that they co-exist without inconsistency. In the Primary Documents, "Screen Rate" is a defined term which sets out, in relation to a relevant benchmark e.g. LIBOR, the administrator of the rate and the screen or other public source on which the rate can be found.

<sup>15</sup> Clause 35.3 (*Other exceptions*) (or equivalent) of the Primary Documents provides that an amendment or waiver which may affect the rights or obligations of an administrative party (such as the Agent or Arranger) cannot be made without the consent of that party.

<sup>16</sup> Users should include if it is appropriate that the provisions of this clause operate upon the occurrence of a trigger event.

<sup>17</sup> Users should consider whether there might be situations in which parties may want flexibility to retain the ability to use either the existing Screen Rate or the Replacement Benchmark on transactions. If this is the case, delete "that" and substitute "(or in addition to) the affected" here.

<sup>18</sup> Users should include if it is appropriate that the provisions of this clause operate upon the occurrence of a trigger event.

may be made with the consent of the Agent (acting on the instructions of the [Majority Lenders]<sup>19</sup>) and the Obligors.

- (b) [If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within [ ]<sup>20</sup> Business Days (or such longer time period in relation to any request which the Company and the Agent may agree) of that request being made:
- (i) its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Facility/ies when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and
  - (ii) its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.]]

**"Relevant Nominating Body"** means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

**"Replacement Benchmark"** means [ ]<sup>21</sup>/[a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
  - (i) the administrator of that Screen Rate [(provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate)]; or
  - (ii) any Relevant Nominating Body,and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;
- (b) in the opinion of the [Majority Lenders]<sup>22</sup> and the Obligors, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or

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<sup>19</sup> Users should insert the consent level that is appropriate in the context of the composition of the lending group ("Majority Lenders" is defined in the Primary Documents as, in short, Lenders representing [66 $\frac{2}{3}$ ]% of the total commitments).

<sup>20</sup> Users should include a time period here that reflects the time which it will take Lenders to consider and respond to the request.

<sup>21</sup> Insert details of any specified pre-agreed replacement benchmark.

<sup>22</sup> Users should insert the consent level that is appropriate in the context of the composition of the lending group.



- (c) *in the opinion of the [Majority Lenders]<sup>23</sup> and the Obligors, an appropriate successor to a Screen Rate.]*

*["Screen Rate Replacement Event" means, in relation to a Screen Rate:*

- (a) *the methodology, formula or other means of determining that Screen Rate has[, in the opinion of the [Majority Lenders],<sup>24</sup> and the Obligors] materially changed;*
- (b)
- (i)
- (A) *the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or*
- (B) *information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,*
- provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;*
- (ii) *the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;*
- (iii) *the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or*
- (iv) *the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or*
- (c) *[the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:*
- (i) *the circumstance(s) or event(s) leading to such determination are not (in the opinion of the [Majority Lenders] and the Obligors) temporary; or*

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<sup>23</sup> Users should insert the consent level that is appropriate in the context of the composition of the lending group.

<sup>24</sup> Users should insert the consent level that is appropriate in the context of the composition of the lending group.

- (ii) *that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the period opposite that Screen Rate in Schedule [15] (Screen Rate contingency periods)]<sup>25</sup>; [or]*
- (d) *[in the opinion of the [Majority Lenders]<sup>26</sup> and the Obligors, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.]]*

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<sup>25</sup> Note: the Screen Rate administrators (for LIBOR, EURIBOR and EONIA) have reduced submissions/fallback policies which could be triggered if fewer than the usually required number of banks contributed submissions for the calculation of the relevant rate. These policies generally prescribe that their use would be published by the administrator either on the relevant screen page or (in the case of LIBOR) as the administrator deems appropriate.

<sup>26</sup> Users should insert the consent level that is appropriate in the context of the composition of the lending group.

- (b) Insert the overleaf Schedule 15 (*Screen Rate contingency periods*) after Schedule 14 [*Other Benchmarks*].

## **SCHEDULE 15**

### ***Screen Rate contingency periods***

<b><i>Screen Rate</i></b>	<b><i>Period</i></b>
<i>LIBOR</i>	[ ]
<i>EURIBOR</i>	[ ]
<i>[EONIA</i>	[ ]
<i>Overnight LIBOR</i>	[ ] <sup>27</sup>

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<sup>27</sup> Include if the relevant Primary Document includes a Swingline Facility