CMi2i RESEARCH & INSIGHTS

# THE LIBOR LANDSCAPE IN 2021: THE NEED FOR CONSENT SOLICITATIONS

WITH THE END OF LIBOR APPROACHING QUICKLY IT IS TIME FOR ISSUERS TO ASCERTAIN WHETHER THEY NEED A CONSENT SOLICITATION

# THE LIBOR LANDSCAPE IN 2021

## INTRODUCTION

Since the FCA announced it would no longer require banks to submit LIBOR data by the end 2021, global regulators, financial institutions, corporates, and their advisors have embarked on a transition away from LIBOR and other interbank offer rates in favour of risk-free rates (RFRs). Three years have since passed and great progress has been made. However, significant challenges remain, most notably when it comes to legacy bonds. Whilst issuing new bonds linked to RFRs is a relatively straight forward process, legacy bonds require their terms to be altered so that they no longer reference IBORs. This is because most fallback language references the last available rate applying to a previous interest period, which would effectively mean that floating rate bonds become fixed bonds for the remaining maturity. **While there are few options available to issuers to effectively transition these bonds, it has now become apparent that the most risk-free transition path is to carry out a consent solicitation.**

Consent solicitations are nothing new to financial institutions and are regularly carried out by issuers. However, they do require issuers to follow a specific process that takes time. CMi2i advises clients allocate at least 70 days for the entire consent process. **Furthermore, when it comes to altering material terms, a simple majority is not enough for most bonds. Under English law, for example, a threshold of 75% is required, which means that issuers must actively engage with bondholders to ensure this threshold is met.** To complicate things further, as outlined in a previous CMi2i paper, there are 5,354 LIBOR linked legacy fixed income securities across over 1,700 issuers.

It is for this reason that many markets participants have pushed for a legislative solution to solve this mammoth task. As such, on 30 November 2020, **the ICE Benchmark Administration (IBA) announced that it will hold a consultation on its intention to extend most US Dollar LIBOR (USD LIBOR) tenors until 30 June 2023. If this extension is granted, the LIBOR landscape would decrease considerably, but would remain significant as analysed by CMi2i.**

**Even with the extension, there are still 4,984 LIBOR securities that will need to transition, for a combined total value of over $780 billion. These notes have a wide range of governing laws, maturities, and country of incorporations.** Therefore, while it is still possible for a legislative solution to automatically transition all LIBOR legacy bonds, these securities are so diverse that an all-encompassing solution would be extremely difficult to implement. **It is thus advisable for issuers to take advantage of this extension and to start transitioning their bonds as soon as possible, without relying on a potential legislative solution.**

## THE LIBOR UNIVERSE BY LIBOR TYPE

Before the USD LIBOR extension was proposed, CMi2i identified over 5,000 securities that would need to transition. With the proposed extension, the total number would fall to 4,984 for a total value of over $780 billion, a decrease of nearly 7% (Figure 1). Of these securities, 4,672, or 94%, are linked to USD LIBOR, while the remaining 312 (6%) securities are linked to the other currency LIBORs, with GBP LIBOR notes making up the lion share.

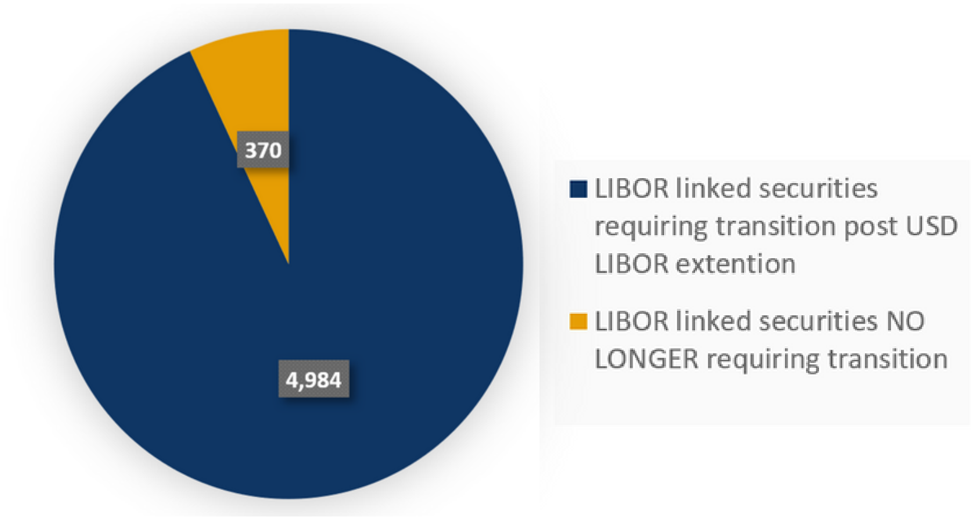


Figure 1. The LIBOR Transition Landscape change post USD LIBOR extension (Source: Bloomberg)

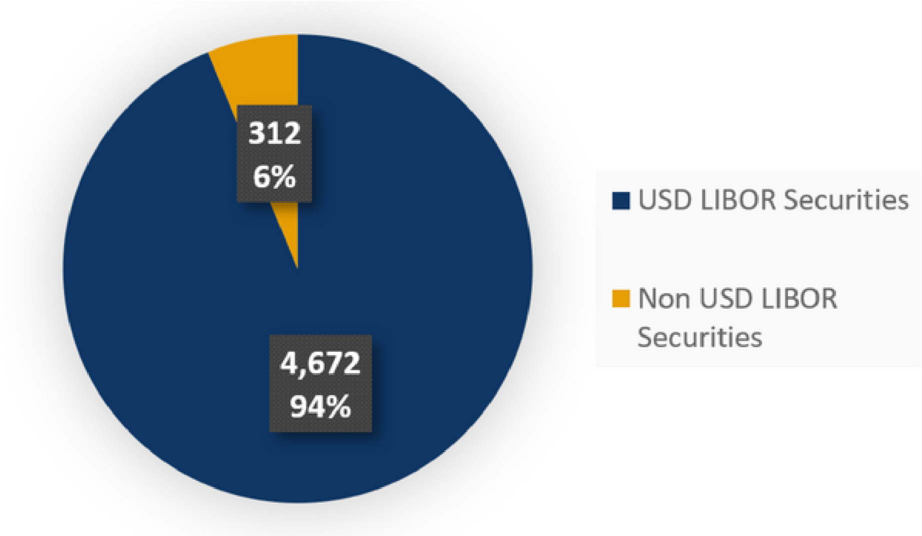


Figure 2. The LIBOR transition landscape post USD LIBOR extension – USD LIBOR vs other LIBORs (Source: Bloomberg)

## THE LIBOR TRANSITION LANDSCAPE BY GOVERNING LAW

While the split by LIBOR type is clear-cut in favour of USD LIBOR, looking at the transition universe from a governing law perspective, shows a considerably more diverse dataset. Interestingly, 37% of all securities are governed by English law and only 31% fall under New York law (Figure 3). Looking only at the USD LIBOR universe paints a very similar picture- out of 4,672 bonds, 1,647 (35.5%) are governed by English Law and 1,549 (33.15%) fall under New York law. USD LIBOR notes are far from homogenous when it comes to governing law.

**This has major implications when it comes to carrying out consent solicitations as it is the governing law that affects both the participation levels needed and voting quorums required for a successful consent solicitation.** Under English law, the quorum is 75%, which while high, is certainly achievable. Under New York law, a consent solicitation requires unanimous consent. It is therefore essential for issuers to review their bond documentations and plan their transition strategy based on the governing laws of their bonds.

**The fact that the LIBOR landscape is so diverse from a legal perspective also makes a legislative solution harder to achieve as it will require different governments and regulators to coordinate.**

Please note that there currently are just over 1,000 bonds for which there is no publicly available information on the governing law. However CMi2i believes that they are very likely to be split between New York and English law as they are almost all USD LIBOR linked notes.

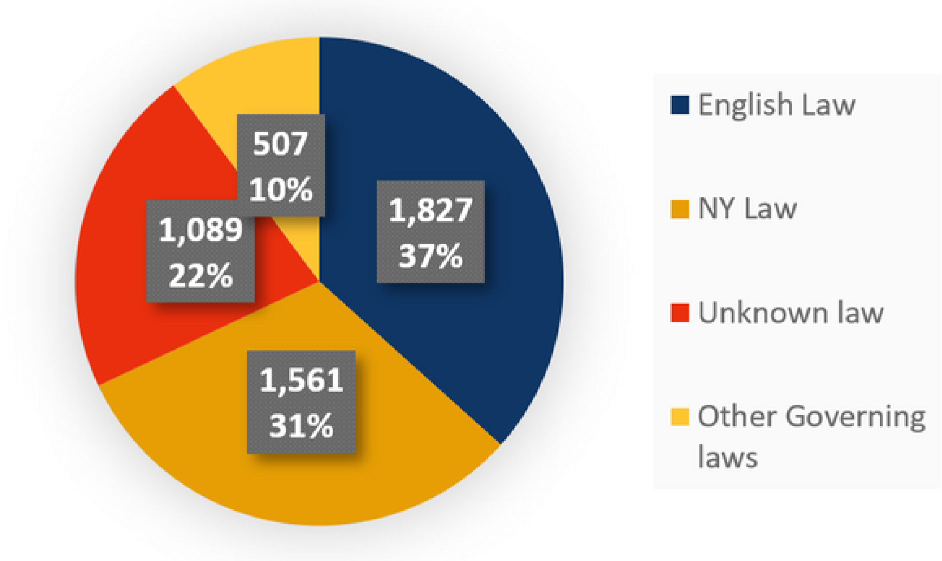


Figure 3. LIBOR Transition Universe by Governing Law
(Source: Bloomberg)

## THE LIBOR TRANSITION LANDSCAPE BY COUNTRY

The fact that LIBOR became a cornerstone of the financial industry is reflected not only by the sheer number of legacy bonds needed to transition away from it, but also by the diverse geographic locations of the legacy bond issuers. CMi2i has identified over 1,000 issuers located in more than 60 countries. Overall, 38% of issuers are domiciled in the US, while a further 10% are in the UK. European issuers account for a further 19% (Figure 4).

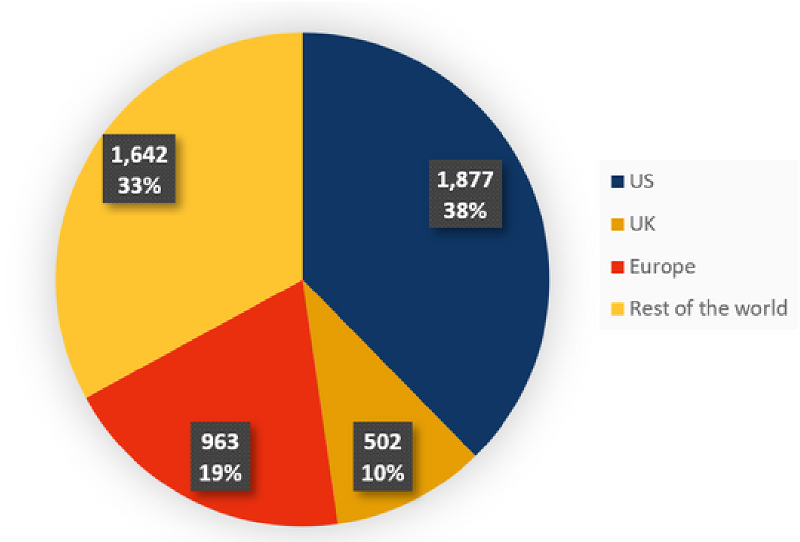


Figure 4. LIBOR Transition Universe by Country of Domicile
(Source: Bloomberg)

**This geographic split does not reflect the LIBOR currency.** For example, there are 502 UK issuers but there are only 312 GBP LIBOR linked bonds. USD LIBOR bonds have been issued by a very international group of issuers, as only 40% of them are US based. Indeed, Latin American corporates like Bank Itau, are among the most prominent USD LIBOR issuers.

**An issuer's domicile also impacts consent solicitations as it can add a level of complexity for regulators wishing to find a legislative solution.** For example, the European Union's proposed amendment to the EU Benchmark Regulation would only apply to contracts governed by the laws of a third country, or if all parties are established in the EU and the relevant third country law does not provide for an orderly winddown of a benchmark (More here).

## THE LIBOR TRANSITION LANDSCAPE BY MATURITY

Finally, the last bond characteristic issuers should be aware of is maturity. This is for two reasons. **Firstly, the more homogeneous the maturity, the easier it will be for regulators to extend the transition deadline in a similar way to what IBA has done.** Secondly, the longer the maturity, **the more important the negotiations regarding the new RFRs will become.** This is because predicting future interest rates becomes harder the longer the time horizon, making the change to the new RFR more critical for bondholders and their investments.

As Figure 5 shows, 43% of securities mature after 2027, with a further 23% maturing between 2025 and 2027. **This makes it more challenging for a legislative solution to completely solve the issue of legacy bonds**. It also means for the issuers of these notes, it will be key to engage with bondholders to ensure that the proposed new rate has the support it needs. So far 15% of all consent solicitations under English law have failed precisely because the bondholders did not support the proposed changes. **Issuers should remember that the rate change is not a simple mechanical change and it is not a given that enough bondholders will support it. Knowing and engaging with bondholders to quantify the support levels can it maximise the success of a consent solicitation.**

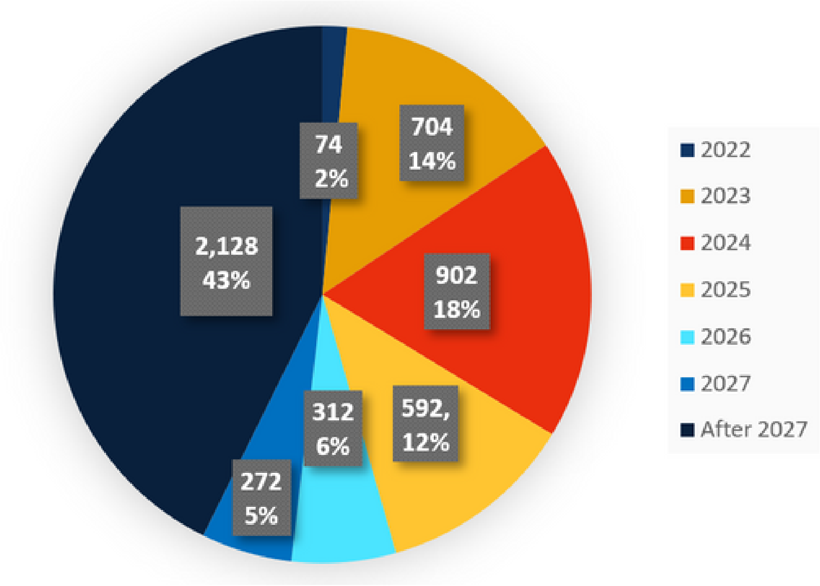


Figure 5.LIBOR Transition Universe by Maturity*
(Source: Bloomberg)

* The 2% of bonds maturing in 2022 are not USD LIBOR

## CONCLUSION

With the LIBOR transition deadlines looming, it is more important than ever for issuers to ensure that they are ready for it. As this paper has shown, the LIBOR legacy bond universe is so diverse that waiting for a potential legislative solution is a risky strategy. The IBA USD LIBOR extension has reduced the number of legacy bonds, but there are still almost 5,000 bonds that need to transition. Consent solicitations, if carried out properly, are the most recommended route of action for any issuer wanting to avoid any potential disputes and minimise legal, reputational and economic risks.

## CONTACT

21-26 Garlick Hill
London EC4V 2AU
sales@cmi2i.com
+44 (0) 203 824 1450
www.cmi2i.com

## AUTHOR

MASSIMILIANA SMITH
Head of Debt Intelligence Services
massi@cmi2i.com

## ABOUT CMi2i

We are specialists in Bondholder ID, engagement and vote solicitation, providing:

- Unparalleled forensic equity and debtholder identification
- Preparatory Risk Analysis
- Governance & Regulatory Analysis
- Share & bondholder outreach, mobilisation and vote solicitation

CMi2i provides the most accurate Bondholder identification available due to our unique methodology. We work closely with institutions, corporates and their advisors and have provided insights on over 1000 Corporate Transactions, Proxy Battles and Activist Defences, where accurate owner & decision maker mapping and technical knowledge is a critical part of success.

# CORE TEAM

The CMi2i core team have worked together for over a decade, performing bondholder and shareholder identification and mobilising holders to vote in support of proposed issuer items at AGMs. We have worked for more than 500 of the largest companies across the globe on over 1000 corporate transactions, proxy battles and activist defences, and 1200 general meetings.

MARK SIMMS
Founder and CEO

MASSIMILIANA SMITH
Head of Debt Intelligence Services

NIC BENNETT
Senior Strategic Communications Advisor

RICHARD RACZ-CLARKE
Managing Director
Business Development

AUDRA OLIVER
Head of Communications

ISSY BRIAULT
Head of Institutional Sales

NANCY HAMENI
Head of Proxy Solicitation

LAURENT MUZARD
Senior Debt Analyst

SIMON BRAY
Director & CMI Advisory

DANIEL STROMGREN
Head of Forensic Analytics