

MEMO# 32270

March 6, 2020

LIBOR Update: ARRC Legislative Proposal, UK Financial Conduct Authority "Dear CEO" Letter, and Federal Reserve Bank of New York SOFR Averages Publication

[32270]

March 6, 2020 TO: Accounting/Treasurers Committee

Derivatives Markets Advisory Committee

LIBOR Transition Working Group

SEC Rules Committee

Securities Operations Advisory Committee

Security Valuation Operations Committee RE: LIBOR Update: ARRC Legislative Proposal, UK Financial Conduct Authority "Dear CEO" Letter, and Federal Reserve Bank of New York SOFR Averages Publication

We wanted to alert you to recent activity from the Alternative Reference Rate Committee (ARRC), UK Financial Conduct Authority (FCA), and Federal Reserve Bank of New York (FRBNY) concerning LIBOR transition.

I. ARRC Recommended New York State Legislation

The ARRC released a proposal for New York State legislation that it recommends to alleviate the effect of LIBOR discontinuation on certain agreements subject to New York law.[\[1\]](#) The legislation would establish a "Recommended Benchmark Replacement" that would be selected by the Federal Reserve Board, Federal Reserve Bank of New York, or ARRC. In general, the proposed legislation would:

- Prohibit parties from refusing to perform contract obligations as a result of LIBOR discontinuation or use of the Recommended Benchmark Replacement;
- Establish that the Recommended Benchmark Replacement is a commercially reasonable substitute for LIBOR; and
- Provide a safe harbor from litigation for the use of the Recommended Benchmark Replacement.

Specifically, the proposed legislation would apply the Recommended Benchmark Rate to legacy agreements if:

- The agreement is silent as to fallback language if LIBOR is discontinued;
- The agreement falls back to a LIBOR-based rate (such as the last-quoted LIBOR);
- The agreement includes fallback language requiring parties to poll for LIBOR or another interbank funding rate; or
- A party to the contract with the right to exercise discretion regarding fallback language decides to exercise the proposed statutory safe harbor;

The proposed legislation would also allow parties to mutually opt-out of the application of the statute.

The ARRC proposal includes case studies that describe the intended impact of the proposed legislation on floating rate notes, securitizations, consumer adjustable rate mortgages, derivatives, business loans, procurement agreements, and municipal bond markets.

II. UK FCA Dear CEO Letter

The UK FCA recently issued a “Dear CEO” letter to the asset management industry.^[2] The letter encourages asset managers to accelerate their efforts to ensure that they are prepared for LIBOR discontinuation at the end of 2021. In particular, the letter urges asset managers to:

- Switch from LIBOR swaps to SONIA swaps for new positions;
- By third quarter 2020, cease making new investments on behalf of clients in LIBOR-based cash products that will mature beyond 2021; and
- By third quarter 2020, cease launching new products with benchmarks or performance fees linked to LIBOR.

The letter also recommends that, if they have not done so already, asset managers develop a plan to manage their LIBOR exposure across all business functions. Particularly, asset managers should ensure that their operations are prepared for the transition.

III. FRBNY SOFR

Earlier this month, the FRBNY began publishing 30-, 90-, and 180-day SOFR averages along with an index of SOFR that allows market participants to calculate compounded SOFR average rates over a custom time period.^[3] The FRBNY will publish these metrics each business day on their website.

Bridget Farrell
Assistant General Counsel

endnotes

^[1] ARRC Proposed Legislative Solution to Minimize Legal Uncertainty and Adverse Economic Impact Associated with LIBOR Transition (Mar. 6, 2020), *available at* <https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC-Proposed-Legislative-Solution.pdf>.

^[2] See UK FCA, Asset Management Firms: Prepare Now for the End of LIBOR, (Feb. 27, 2020), *available at* <https://fca.org.uk/publication/correspondence/dear-ceo-asset-management-libor.pdf>.

[3] See SOFR Averages and Index Data, *available at* <https://apps.newyorkfed.org/markets/autorates/sofr-avg-ind>. The FRBNY also provides its methodology for calculating the averages and index. See Additional Information about the Treasury Repo Reference Rates, *available at* <https://www.newyorkfed.org/markets/treasury-repo-reference-rates-information>. The FRBNY proposed its methodology for calculating the SOFR averages and index in November 2019. See Statement Requesting Public Comment on a Proposed Publication of SOFR Averages and a SOFR Index (Nov. 4, 2019), *available at* https://www.newyorkfed.org/markets/opolicy/operating_policy_191104.

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