

ALERTS

LIBOR Transition Update: New York State Legislature Passes LIBOR Transition Bill

April 7, 2021

On March 24, the New York State Legislature passed Senate Bill 297B/Assembly Bill 164B (“Bill”)[1] which addresses the legal uncertainty and potential adverse impacts associated with the transition away from the London Interbank Offered Rate (“LIBOR”) due to its upcoming cessation. This Bill is closely based on the legislation proposed by the Alternative Reference Rates Committee (“ARRC”) on March 1, 2021.[2] The Bill will next be delivered to Governor Cuomo for his consideration and signature or veto.

If signed into law by Governor Cuomo,* the Bill would provide a statutory replacement benchmark rate for agreements governed by New York law that use LIBOR but which contain no fallback provisions or which contain fallback provisions which result in replacement rates that are based on LIBOR in some way. The Bill would also prohibit parties to such agreements from refusing to perform contractual obligations or declaring a breach of contract as a result of the discontinuance of LIBOR or use of a “recommended benchmark replacement,” as well as establish that the selection or use of the recommended benchmark replacement constitutes a commercially reasonable replacement for, and a commercially substantial equivalent to, LIBOR. The Bill also provides a safe harbor from litigation for the use of the recommended benchmark replacement. The Bill will not override contracts which either fall back expressly to a non-LIBOR based rate or which give a determining person the right to exercise discretion or judgement regarding fallback language.

The Bill would convert the interest rate in such contracts from LIBOR to the new recommended benchmark replacement selected or recommended by a “relevant recommending body” (defined as the Federal Reserve Board, the Federal Reserve Bank of New York or the ARRC, or any successors to any of them) following the occurrence of a “LIBOR discontinuance event” (defined as a statement or publication by or on behalf of the administrator or regulators of LIBOR that the administrator has ceased or will cease to provide LIBOR, and no successor administrator will continue to provide LIBOR, or announcing that LIBOR will no longer be representative).[3] The recommended benchmark replacement selected by the ARRC is the Secured Overnight Financing Rate, and would include any “recommended spread adjustment” and any “benchmark replacement conforming changes”

(which include any technical, administrative or operation changes that are reasonably necessary) recommended by the relevant recommending body.

The ARRC has noted that there may still be a significant portion of contracts that will mature after the respective Dec. 31, 2021 and June 30, 2023 cessation dates which have no other effective means to replace LIBOR upon its cessation, and that the Bill would address such contracts written under New York law, which governs many of the financial products and agreements referencing LIBOR. For further information on the upcoming cessation dates for all LIBOR settings announced by LIBOR's administrator and regulator, see our March 8, 2021 *Alert*.^[4]

Authored by Phillip J. Azzollini, Taleah E. Jennings, Douglas I. Koff, Anna Maleva-Otto, Andi Mandell, Polly O'Brien, Daniel Oshinsky, Craig Stein and Atul Joshi.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

For the latest information on preparing for the transition from LIBOR, visit SRZ's LIBOR Transition Resource Center.

* *The Bill was signed into law on April 7, 2021.*

[1] The Bill text and status may be found at: <https://www.nysenate.gov/legislation/bills/2021/s297/amendment/b>.

[2] The ARRC's proposed legislation may be found at: <https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/libor-legislation-with-technical-amendments>.

[3] This occurred on March 5, 2021. See "FCA announcement on future cessation and loss of representativeness of the LIBOR benchmarks," <https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf>. See "ARRC Confirms a 'Benchmark Transition Event' has occurred under ARRC Fallback Language," https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Benchmark_Transition_Event

[4] "FCA Announces Dates LIBOR Settings Will Cease to Be Provided or Be Representative; ISDA Declares Index Cessation Event and Fixing of Spread Adjustment," *SRZ Alert*, March 8, 2021, available here.

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Related People



**Phillip
Azzollini**

Partner
New York



**Taleah
Jennings**

Partner
New York



**Douglas
Koff**

Partner
New York



**Anna
Maleva-Otto**

Partner
London



**Andrea (Andi)
Mandell**

Partner
New York



**Paula-Marie (Polly)
O'Brien**

Partner
London



**Daniel
Oshinsky**

Partner
New York



**Craig
Stein**

Partner
New York



**Atul
Joshi**

Finance & Derivatives
Counsel
New York

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