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ARRC Proposes New York State Legislation to Facilitate LIBOR-to-SOFR Transition.

The Alternative Reference Rates Committee (the "ARRC") recently proposed statutory language for consideration by the New York State legislature intended to minimize costly and disruptive litigation that could result from the discontinuation of LIBOR at the end of 2021. Because many of the financial products and agreements that reference LIBOR are governed by New York law, the ARRC is encouraging urgent legislative action to provide legal certainty to market participants and mitigate potential risks to the economic stability of the financial markets. The accompanying memo published by the ARRC presents a conceptual description of a legislative solution to address LIBOR cessation in financial contracts and outlines several case studies that detail how the proposed statutory language would interact with certain financial products, including floating rate notes, securitizations, consumer adjustable rate mortgages, derivatives, business loans, procurement agreements, and municipal bonds. The ARRC's publication also includes draft statutory text that the New York State legislature could consider if it decided to adopt the ARRC's proposal.

Overview of Proposed Legislation

1. Prohibit a party to the relevant contract from refusing to perform its obligations under the agreement or declaring a breach of contract as a result of LIBOR cessation or the use of the statutory benchmark replacement;
2. Establish that the statute's recommended benchmark replacement (which includes a spread adjustment) is a commercially reasonable and economically equivalent substitute for LIBOR; and
3. Provide market participants with a safe harbor from litigation when they use the statute's recommended benchmark replacement.

Use of the statute's recommended benchmark replacement, which is the benchmark rate recommended by the Federal Reserve Board, the Federal Reserve Bank of New York, or the ARRC, would be required for contracts that are silent with respect to what occurs when LIBOR ceases or where the existing fallback language resorts to a LIBOR-based rate (e.g., polling banks for LIBOR or the last quoted LIBOR), unless the parties mutually agree to opt out of the proposed legislation's mandatory application. For contracts with fallbacks that provide a party with discretion to select a replacement rate, the proposed statute provides a safe harbor if the party with such discretionary power elects to use the statute's recommended benchmark replacement. The ARRC's proposed statute would not have any impact on contracts that contain fallback provisions to a non-LIBOR replacement rate (such as a Prime-based rate), however.

Conclusion

The ARRC's proposed statute and accompanying memo can be found here. While the proposed statute aims to alleviate the potential burden on New York's judicial resources resulting from LIBOR cessation-related disputes, market participants should not rely on a legislative solution alone. With approximately $200 trillion of financial products worldwide referencing the USD LIBOR benchmark, market participants are strongly encouraged to analyze their portfolios to identify contracts that lack

provisions addressing LIBOR cessation or have provisions that could have significant economic impacts that were not previously anticipated, and to immediately begin amending the terms of those contracts where possible.

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