Submission for the Record by the Securities Industry and Financial Markets Association (SIFMA)

U.S. House Committee on Financial Services Committee
Subcommittee on Investor Protection, Entrepreneurship and Capital Markets

"The End of LIBOR: Transitioning to an Alternative Interest Rate Calculation for Mortgages, Student Loans, Business Borrowing, and Other Financial Products"

April 15, 2021

Chairwoman Waters, Ranking Member McHenry, Subcommittee Chairman Sherman, Subcommittee Ranking Member Huizenga:

The Securities Industry and Financial Markets Association[1] (SIFMA) submits this statement for the record for the hearing titled "The End of LIBOR: Transitioning to an Alternative Interest Rate Calculation for Mortgages, Student Loans, Business Borrowing and Other Financial Products." We thank you for convening this important hearing and applaud your leadership for making the transition from LIBOR to alternative reference rates a priority for the committee

Summary

SIFMA believes that Federal legislative action is necessary to address the set of issues that we discuss further below in order to facilitate the smooth transition from LIBOR to alternative reference rates. In particular, there is a large stock of existing contracts and instruments that, as a practical matter, cannot be amended to utilize alternative rates. SIFMA is supportive of Federal legislation aligned with recommendations from the Alternative Reference Rates Committee ("ARRC") to address these situations where contracts cannot be easily transitioned from LIBOR due to legal or regulatory reasons. We believe such legislation would benefit all market participants including LIBOR's end users, from investors to companies to consumers, and would provide four key benefits: (1) certainty of outcomes, (2) fairness and equality of outcomes, (3) avoidance of years of paralyzing litigation, and (4) preservation of liquidity and market resilience.

Our testimony today will provide background on the LIBOR transition, why it needs to happen, what has been done, and where we believe Federal legislation is appropriate and needed.

We look forward to working with the Committee to move this important legislation forward.

Background on LIBOR and the Need for Transition

LIBOR[2] is referenced by approximately $223 trillion of financial products.[3] It is a shaky foundation because the underlying transactions upon which LIBOR was intended to be based have dwindled as financial markets and bank funding models have evolved. Today's LIBOR is informed primarily (and sometimes entirely) by "expert judgement". That is, LIBOR is derived from estimates of transactions, not actual transactions. This means that LIBOR doesn't reflect

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[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

[2] LIBOR is a forward-looking interest rate benchmark derived from submissions from participating banks. It is intended to reflect the cost of unsecured interbank funding across various tenors (lengths of time), and is published in 35 currency/tenor pairs, e.g., 3-month US Dollar, 6-month US Dollar, or 3-month Sterling. LIBOR is published by in London by ICE Benchmark Administration, and is regulated by the U.K.'s Financial Conduct Authority.

[3] See "March 2021 Progress Report" from the ARRC: https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/USD-LIBOR-transition-progress-report-mar-21.pdf, page 3.

the true cost of bank funding and is vulnerable to volatility and manipulation. Global regulators saw the problem with placing the foundation for global financial markets on such a construct nearly a decade ago, and they began to examine how more robust alternative reference rates could be identified or developed to replace LIBOR.[4] The key message from the regulatory community has been and continues to be that LIBOR is not suitable and market participants must transition to alternative reference rates.[5]

LIBOR Will End – There Is No Doubt

For a number of years, U.S. Dollar LIBOR appeared set to cease publication at the end of 2021. However, in order to provide a smoother transition for legacy instruments, for certain tenors of LIBOR, agreement has been reached for a mid-2023 cessation. On March 5, ICE Benchmark Administration confirmed its cessation plan for LIBOR. Most non-U.S. Dollar LIBOR tenors will cease on December 31, 2021. For U.S. Dollar denominated LIBOR, the largest and most important tenors of LIBOR, cessation will occur on June 30, 2023.[6]

Federal banking regulators have issued guidance that regulated entities should cease executing new LIBOR transactions by the end of 2021 and expeditiously transition existing contracts to new reference rates, noting that *"the agencies believe entering into new contracts that use USD LIBOR as a reference rate after December 31, 2021, would create safety and soundness risks and will examine bank practices accordingly"*[7] and have reiterated the "*intense*" supervisory focus on this issue.[8] This regulatory posture has been echoed in the U.K and Europe. The bottom line is that LIBOR has a definitive end date, and regulators are demanding in no uncertain terms that their regulated institutions move away from LIBOR this year.

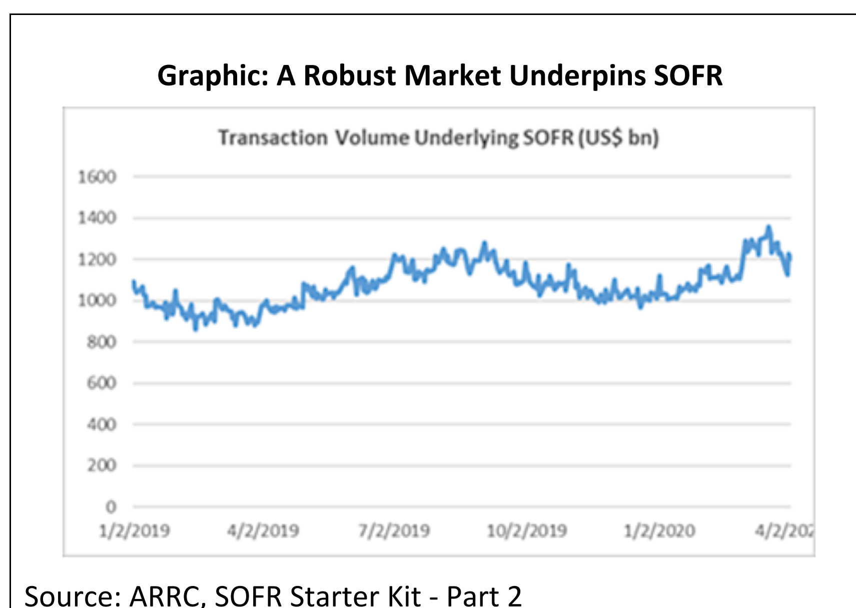
U.S. Action – The ARRC

In 2014 the U.S., the Federal Reserve Board and New York Federal Reserve convened the Alternative Reference Rates Committee, or ARRC. The ARRC's membership is comprised of a broad set of private-market participants — including larger and smaller banks, asset managers, insurers, representatives of municipal interests, industry trade organizations, as well official sector ex-officio members such as the Federal Reserve, SEC, CFPB, OFR, US Treasury, CFTC, FHFA, HUD, OCC, FDIC, Federal Reserve Bank of NY, National Association of Insurance Commissioners, the New York Department of Financial Services, and others.[9] Over 300

[4] See, e.g., "Reforming Major Interest Rate Benchmarks" published by the Financial Stability Board in 2014.
[5] Maybe most notably, these 2017 remarks from Andrew Bailey, then Chief Executive of the U.K.'s Financial Conduct Authority: https://www.fca.org.uk/news/speeches/the-future-of-libor
[6] IBA's statement is here: https://ir.theice.com/press/news-details/2021/ICE-Benchmark-Administration-Publishes-Feedback-Statement-for-the-Consultation-on-Its-Intention-to-Cease-the-Publication-of-LIBOR-Settings/default.aspx
[7] See, e.g., https://www.federalreserve.gov/supervisionreg/srletters/SR2027.htm and https://www.federalreserve.gov/supervisionreg/srletters/SR2107.htm,
[8] See remarks by Federal Reserve Vice Chairman Quarles on March 22: https://www.federalreserve.gov/newsevents/speech/quarles20210322a.htm
[9] Full list of ARRC members here: https://www.newyorkfed.org/arrc/about#members

institutions participate in the ARRC either as members or participants in ARRC committees.[10] SIFMA is a member of the ARRC.

The ARRC began with an initial goal of recommending an alternative to LIBOR. The group reviewed a number of options for more robust reference rates, and in 2017 issued a recommendation that SOFR would be the preferred, robust alternative to LIBOR. SOFR is a fully transaction-based rate, referencing the previous day's activity in the repurchase markets. SOFR is based on approximately $1 trillion of daily transactions from a wide range of market participants and is administered by the New York Fed. SOFR is, by intent and construction, a reliable and representative indicator of market interest rates. SOFR is published on a daily basis by the New York Fed.



Graphic: A Robust Market Underpins SOFR

Source: ARRC, SOFR Starter Kit - Part 2

The ARRC followed this milestone with the development and publication of numerous recommendations, guidance documents, and reference materials. These have addressed overall market and transition background,[11] a *Users Guide to SOFR*,[12] recommendations for business loans,[13] floating rate notes and securitizations,[14] consumer products such as adjustable rate mortgages and student loans,[15] derivatives,[16] enhanced fallback language for new transactions that reference LIBOR so that when LIBOR ceases publication the transactions can transition to alternative rates such as SOFR,[17] a fixed spread adjustment that creates symmetry

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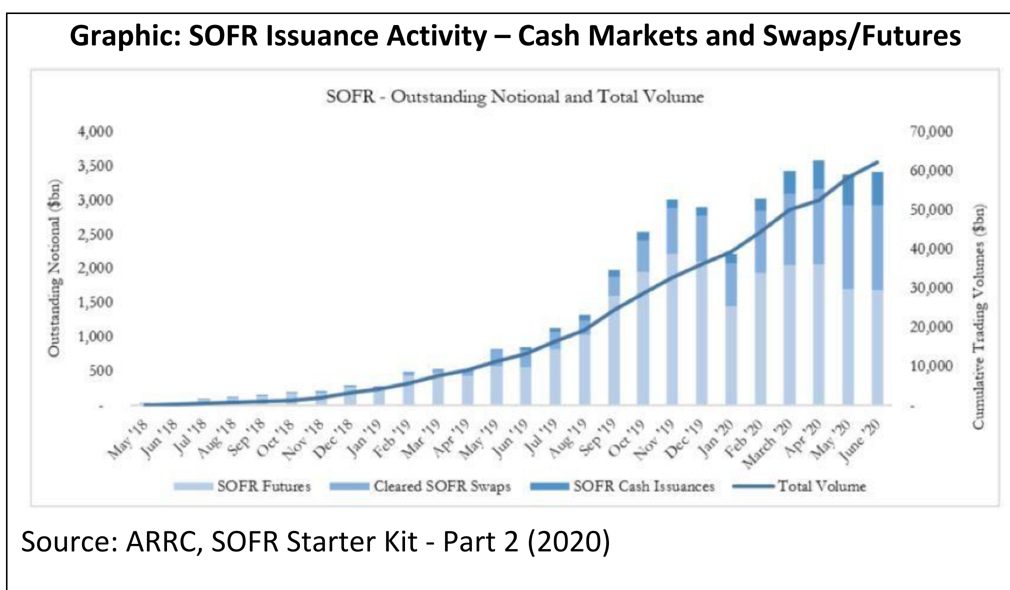
[10] https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Factsheet_2.pdf
[11] https://www.newyorkfed.org/arrc/publications/overall-transition-materials
[12] https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/users-guide-to-sofr2021-update.pdf
[13] https://www.newyorkfed.org/arrc/publications/business-loans
[14] https://www.newyorkfed.org/arrc/publications/floating-rate-notes-securitizations
[15] https://www.newyorkfed.org/arrc/publications/consumer-products
[16] https://www.newyorkfed.org/arrc/publications/derivatives
[17] ARRC contract language recommendations may be found here: https://www.newyorkfed.org/arrc/fallbacks-contract-language

across most cash and derivatives products,[18] operations and infrastructure related issues,[19] regulatory relief and actions needed to facilitate the transition,[20] and other topics. Importantly, and discussed further below, the ARRC also developed and published draft legislation to address issues with existing ("legacy") transactions.[21]

The ARRC has developed these materials in line with a steady progression towards a successful transition away from LIBOR in line with its Paced Transition Plan, which lays out goals and milestones for this important work.[22] The market has broadly accepted this work, as shown by the usage of ARRC-recommended fallback language in new transactions, the issuance of significant amounts of debt referencing SOFR (over 1250 issuances totaling almost $1 trillion as of March 31, 2021),[23] and the execution of trillions of dollars of SOFR-based swaps and futures contracts.



Graphic: SOFR Issuance Activity – Cash Markets and Swaps/Futures

Source: ARRC, SOFR Starter Kit - Part 2 (2020)

The "Tough Legacy" Problem

So-called "legacy" transactions are LIBOR-based transactions that were executed prior to LIBOR cessation, and in many cases prior to the development/adoption of robust fallback language (e.g., 2019-2020). They present special challenges for this transition. Of the $223 trillion in

[18] See ARRC spread adjustment announcement: "The five-year median spread adjustment methodology matches the methodology recommended by the International Swaps and Derivatives Association (ISDA) for derivatives. For consumer products, reflecting support from both consumer advocacy groups and mortgage lenders responding to the consultation, the ARRC additionally recommended a 1-year transition period to this five-year median spread adjustment methodology", available here: https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2020/ARRC_Recommendation_Spread_Adjustments_Cash_Products_Press_Release.pdf

[19] https://www.newyorkfed.org/arrc/publications/operations-infrastructure

[20] https://www.newyorkfed.org/arrc/publications/accounting-tax-regulation

[21] https://www.newyorkfed.org/arrc/publications/legislation

[22] https://www.newyorkfed.org/arrc/sofr-transition#progress

[23] Source: Castle Oak Securities

outstanding LIBOR transaction, the ARRC estimated that 67% would roll off by June 2023, leaving about $74 trillion in LIBOR exposure extending beyond June 2023. $68 trillion of this is comprised of swaps, futures, and related transactions.[24] Many (but not all) of these transactions can be amended and addressed by industry-wide protocols such at the ISDA protocol[25] or by actions by clearing houses to convert outstanding positions.[26]

The remaining $6 trillion of exposures are comprised of various types of "cash" products – bonds, notes, loans, asset backed securities and other extensions of credit. As shown below, ARRC estimates that about $1.9tr of this is comprised of bonds and securitizations, which commonly do not have adequate fallback provisions.

Graphic: Outstanding LIBOR Instruments

Table 1: USD LIBOR Market Footprint by Asset Class[1]

		Currrently Outstanding ($TN)	Maturing After June 2023 ($TN)
Over-the-Counter Derivatives	Interest rate swaps	81	46
	Forward rate agreements	47	0
	Interest rate options	20	12
	Cross currency swaps	23	8
Exchange Traded Derivatives	Interest rate options	32	0
	Interest rate futures	11	2
Business Loans	Syndicated loans[2]	2.0	1.1
	Nonsyndicated business loans	1.3	0.4
	Nonsyndicated CRE/Commercial mortgages	1.5	0.8
Consumer Loans	Retail mortgages[3]	1.3	0.8
	Other Consumer loans	0.1	0.1
Bonds	Floating/Variable Rate Notes	1.1	0.3
Securitizations[3]	Mortgage-backed Securtes (incl. CMOs)	0.8	0.8
	Collateralized loan obligations	0.5	0.5
	Asset-backed securities	0.2	0.2
	Collateralized debt obligations	0.1	0.1
Total USD LIBOR Exposure:		223	74

[1] Source: Federal Reserve staff calculations, BIS, Bloomberg, CME, DTCC, Federal Reserve Financial Accounts of the United States, G.19, Shared National Credit, and Y-14 data. Data are gross notional exposures as of 2020Q4. [2] The figures for syndicated and nonsyndicated business loans do not include undrawn lines. Nonsyndicated business loans exclude CRE/commercial mortgage loans.[3] Estimated amounts maturing after June 2023 based on historical pre-payment rates

Source: ARRC Progress Report, March 2021

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[24] March 2021 progress report at 3.

[25] https://www.isda.org/protocol/isda-2020-ibor-fallbacks-protocol/

[26] See, e.g., https://www.cmegroup.com/trading/interest-rates/files/cleared-swaps-considerations-for-ibor-fallbacks-and-conversion-proposal.pdf

Many of these products were not designed at the time of issuance with a permanent cessation of LIBOR in mind, and in many cases, these products are difficult or effectively impossible to amend, due to regulatory constraints or practical issues such as identifying all of the holders of a widely distributed security. There are tens of thousands of floating rate securitization and corporate bond transactions. Some contracts don't have fallbacks. More commonly, the fallback provisions would result in a floating rate bond becoming a fixed-rate bond. Other contracts fall back to the judgement of an issuer, administrator, or other party. [27]

In other words, from a practical standpoint, the existing fallbacks aren't effective, as we will explain below. The outcome of a permanent cessation may frequently not be in line with the expectations of issuers, investors, or customers, and may lead to vast amounts of litigation that ties up courts for years and causes major disruption in financial markets and investor portfolios.

In the table below we lay out a common interest rate fallback regime in a legacy floating rate bond (FRN). There are variations on this approach, but this is a very common framework. Tens of thousands of floating rate bonds and notes would become fixed-rate instruments.

Generalized FRN interest rate fallback waterfall	**Impact of a permanent cessation of LIBOR**
1. The interest rate is LIBOR + a spread (e.g. 3-month LIBOR + 2%).	⇒ LIBOR will not be available – go to step 2
2. If LIBOR is not available, the administrator is directed to poll U.S. or U.K. (or both) banks for what LIBOR is.	⇒ It is not expected that banks will respond to requests for LIBOR quotes when LIBOR is no longer published. Go to step 3.
3. If that poll is not successful, the rate shall be the last known LIBOR value.	⇒ This is the likely outcome. This means that floating rate bonds will permanently become fixed-rate instruments.

Our investor and issuer members view this potential outcome as highly disruptive. Investors who invest in floating-rate instruments and issuers who issue them do so purposefully. They invested in or issued floating rate instruments, hedged those floating rate instruments, are benchmarked as if they own floating rate instruments, and plan cashflows based on floating rate instruments. Floating rate instruments may be issued to hedge floating rate assets; if the instrument becomes fixed, a mismatch in cashflows may occur. From an investor standpoint, there are concerns about the valuation and liquidity of instruments should this outcome occur, and it is important to keep in mind that these instruments are held by a broad array of investors, including individuals, corporations, financial institutions, mutual funds, pension funds, 401k plans, and so on. The real-world impact will be felt broadly.

[27] Some products, such as syndicated loans, commonly fall back to a different interest rate benchmark, such as the Prime Rate.

Other instruments (such as mortgage loans or some bonds) will have an interest rate fallback regime whereby a noteholder or administrator will have the power to choose a "comparable" rate when LIBOR is not available. This can also be problematic arrangement – it is not definitive and leaves the ultimate outcome up to the choice of that party which could create a diversity of outcomes for similar products, and of course what is 'comparable' is in the eye of the beholder. We expect that decisions about what is comparable will be highly litigated, and we understand from our members in such administrative roles that they are not typically comfortable making these determinations absent legal cover such as indemnities or court orders. In some cases, steps have already been taken to move these issues to the courts.

Amendment is Not a Realistic Option for Tough Legacy Transactions

The first thought many have regarding this problem is "why can't you just amend these problematic provisions?". Afterall, many swaps and other derivative contracts were amended en-masse by an industry-wide protocol. While this is a sensible question, the reality is that the ability to amend cash products generally falls in a range from "difficult" to "practically impossible". For one, cash market transactions are not as homogeneous as most swap and futures contracts. They are not typically exchange traded, and they are not based on industry-standard forms and documentation that can be amended on an industry-wide basis.

Starting with the simplest transaction, a bilateral LIBOR loan or credit facility, a lender and counterparty discussing an amendment makes sense - in the abstract. The problem is that lenders likely have hundreds or thousands (or more) of these loans, and each negotiation will take time and likely involve legal review (and expense) by both the lender and the customer. Given the actual scale of this problem, our members and the industry more broadly do not view negotiation as a practical option, certainly not by the end of 2021, and not even by June 2023. This means that once again, the likely outcome is uncertainty, disruption, and litigation.

For a more complicated situation we turn to a broadly held LIBOR-based floating rate corporate bond or securitization transaction. There may be hundreds of holders (or more) for these instruments. There are usually contractual or regulatory consent requirements for amendments to the terms of these transactions. In the U.S., amendments to the interest rate provisions of a transaction generally require a supermajority and in many cases 100% consent of holders.[28] This is generally viewed as impossible to achieve on a broad scale of tens of thousands of transactions, given the difficulty in contacting all noteholders, getting each of them to vote, and getting each of them to vote the same way.

Given the nature of securities markets, where bonds are held in street name for the benefit of the ultimate owners, it is not easy to determine who all of the holders are and to contact them. Notifications may be sent from a trustee or DTC or issuer to custodians or other parties, but it is not the case that they will always reach end holders, and not in a timely manner at that. In the worst case, even if they do, the 100% requirement means that every noteholder has to vote,

[28] See Trust Indenture Act discussion below.

and on top of that, every noteholder has to vote in favor. In other words, one noteholder out of 1000, through inaction or a negative vote, could stop an amendment. There have been some successful amendments – related to LIBOR in the UK recently, and in the past in the U.S. related to student loan transactions, for example. However, this limited success on a dramatically smaller scale in specific markets cannot be extrapolated to tens of thousands of transactions in two years.

In some cases, the Trust Indenture Act ("TIA") is at the root of the consent requirement. The TIA provides that *"the right of any holder of any indenture security to receive payment of the principal of and interest on such indenture security…shall not be impaired or affected without the consent of such holder"*, which has been interpreted to apply to interest rate provisions.[29] In transactions subject to the TIA, this is governing law. In transactions not subject to the TIA, it is common that the same, or similar, language will be inserted into a transaction. This language is sensible and protective of investors in the usual context. However, in the context of the transition away from LIBOR, this type of restriction is a roadblock to reform of transaction provisions. We believe narrow and targeted relief from certain provisions of the TIA, implemented in a manner that does not compromise investor protections, is an important component of any Federal legislation.

From a security investor perspective, where investment funds may hold hundreds of floating rate instruments, the resources and time are simply not there to enter into negotiations with each issuer of a bond that is held across a family of mutual funds, pension funds, and other investment vehicles, especially given that the consent requirements discussed above make it clear that your negotiation success depends on the actions (or inactions) of others.

Legislation is Needed to Transition Tough Legacy Transactions that Lack Effective Fallback Provisions – the ARRC Proposal

Recognizing this problem, the ARRC created a working group to look at options and develop recommendations for tough legacy transactions. In March 2021, the ARRC published a proposal for a statutory mechanism to address these ineffective tough legacy transaction fallback provisions. The legislation proposed by the ARRC would create a statutory safe harbor from litigation and replace LIBOR-based fallbacks with those recommended by the ARRC, which would be based on SOFR.[30] The goals of the legislative approach are manifold: to provide certainty of outcomes to contract participants, to provide equality of outcomes to market participants, and ultimately to promote the liquidity and stability of financial markets.

[29] TIA §316(b)
[30] https://www.newyorkfed.org/arrc/publications/legislation

Given that many financial contracts are governed by New York state law, the ARRC initially proposed this legislation in the state of New York.[31] In sum, the ARRC's proposed legislation would:

- ⇒ For contracts where fallbacks are ineffective, i.e. there are no fallbacks, the fallbacks involve a poll for LIBOR rates, or are otherwise based on LIBOR (such as last known LIBOR), the statute would have a mandatory application and replace such provisions with ARRC-recommended provisions;
- ⇒ For contracts where the fallbacks involve discretion, i.e. the responsible party may choose an alternative to LIBOR, the statute would create a safe harbor from litigation if the party chose an ARRC-recommended rate;
- ⇒ Allow contract parties to mutually opt-out of the legislation;
- ⇒ Have no effect on contracts or instruments where the fallback was to a non-LIBOR based rate, such as the Prime Rate, as is common in many syndicated loans and business loans.

SIFMA supported the publication of this language and advocated for its passage in New York.[32,33] The New York City Bar Association offered support for the legislation.[34] The legislation was also supported by consumer advocacy groups.[35]

After years of work and advocacy by the ARRC and others including SIFMA, on March 24th the New York Assembly and Senate passed legislation in line with the ARRC's recommendation on a nearly unanimous vote and the Governor signed the bill. While this is certainly a positive outcome, we believe there is more to be done at the Federal level.

Uniform Federal Legislation Will Benefit Investors, Consumers, and Financial Markets

The broad base of support for this legislation in New York stems from its of benefits to issuers, investors, and consumers. These benefits include:

- ⇒ **All parties will have certainty about the outcome of the LIBOR transition**. Investors, borrowers, and consumers will not be left to the whims of their issuer or lender to know what is going to happen in June 2023. They will know the outcome in advance and be able to plan, hedge, refinance, or take other actions they deem to be in their best interest. We have found in conversations with our members that this is a critical benefit of Federal legislation – our members and their peers do not have the resources or time

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[31] Based on feedback SIFMA has received from market data vendors, we believe a very large majority of securitization contracts that are governed by U.S. law are governed by New York law, and that a majority of corporate bond contracts that are governed by U.S. law are governed by New York law.

[32] See SIFMA statement: https://www.sifma.org/resources/news/sifma-statement-on-transition-from-libor-to-alternative-rates-and-arrc-model-law-for-new-york-state/

[33] See SIFMA-coordinated letter from broad spectrum of entities in support of legislation: https://www.sifma.org/wp-content/uploads/2020/12/ARRC-Letter-of-Support-12.15.20.pdf

[34] Noting that "The Working Group has concluded that the Proposed Statute would survive a legal challenge based on any of these federal or New York State constitutional constraints", available here: https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/libor-replacement-legislation

[35] https://protectborrowers.org/wp-content/uploads/2021/03/Consumer-Group-Letter_LIBOR.pdf

to go transaction-by-transaction to address this complicated issue. This would not be achieved with a patchwork of inconsistent, or non-existent, state legislation.

⇒ **All parties will have the same outcome.** Investors, borrowers, and consumers will be treated the same as their counterparts and peers. In the absence of Federal legislation, one consumer could get a perceived better outcome than their neighbor. With Federal legislation, everyone will be treated the same. This is not likely to happen with a patchwork of inconsistent, or non-existent, state legislation.

⇒ **The legislation will avoid litigation gridlock.** In the absence of Federal legislation, we expect that thousands of lawsuits would occur. There would likely be transaction administrators such as trustees seeking guidance from the courts in Article 77 proceedings in New York and similar proceedings in other states. There would also be the potential for a multitude of adversarial proceedings against trustees, issuers, underwriters, investment managers, etc. As with any court proceeding, the outcome is uncertain until the court issues its decision and appeals are exhausted (in contrast to the certainty provided by legislation noted in the previous two items). Absent Federal legislation, issuers, investors, and consumers may face years of uncertainty and significant costs due to litigation. This would not be ameliorated (and may in fact be complicated) with a patchwork of inconsistent, or non-existent, state legislation.

⇒ **Market stability and liquidity will be preserved.** In the absence of Federal legislation, it could reasonably be expected that transactions subject to disputes could see a drop in value (or an increase in value), creating uncertainty that would cause a drop in liquidity and an increase in volatility. Broadly speaking, that is a negative outcome for holders of these instruments. This would not be avoided with a patchwork of inconsistent, or non-existent, state legislation.

SIFMA Supports Enactment of Federal Legislation Modeled on the ARRC's Proposed Legislation

SIFMA strongly recommends that Congress enact legislation that is aligned with the ARRC's approach. While the New York legislation is useful as regards certain New York law-governed instruments, it is not a full solution even for many of those instruments and does not address any non-New York law contracts or Federal issues such as the Trust Indenture Act. Only Federal legislation can address these problems.

Federal legislation can address all contracts governed by a state or federal law. There are, after all, 49 other states. While a majority of corporate bonds and securitizations are governed by New York law, a vast number of loans, credit facilities, bonds, and other instruments are governed by state laws other than New York. A uniform Federal law can promote the benefits we discussed above – contract certainty, fairness and equality of outcomes, avoidance of years of litigation, and market liquidity – across the nation. A patchwork of inconsistent, or non-existent, state legislation, cannot do this.

Federal law can also address issues such as the Trust Indenture Act, discussed above, and provide narrow, targeted relief that allows contracts to transition to more robust reference rates without impossible to meet unanimous consent requirements. Federal law can also ensure that there are not adverse tax or other consequences to issuers, holders, or consumers.

While U.S. Dollar LIBOR is expected to be published until June 2023, we believe time is of the essence as regards proposed legislation. Bank regulators are highly focused on moving as much activity away from LIBOR as quickly as possible. Additionally, once legislation is passed, it is not the case that the provisions of the law are implemented immediately. There are a large number of parties involved in these transactions, and it will take meaningful amounts of time for all parties to revise internal systems and models to account for changes to interest rate calculations, for transaction-level changes to be communicated to end-users, and for other steps that need to be taken to happen.[36]

SIFMA and its members commend Representative Sherman and members of the subcommittee for holding this hearing and for moving this important issue forward. We also appreciate the opportunity to provide feedback on the discussion draft and for aligning the legislation with recommendations of the ARRC to the greatest extent possible and the goals and benefits described above. To that end, we strongly support a Federal solution as embodied in the discussion draft and look forward to working with the bill's sponsors to further refine the legislation as it moves through the legislative process.

We urge this Subcommittee to carefully consider this legislation in the context of our testimony today. We believe Congress can provide a great service to consumers, businesses, lenders, and investors by enacting targeted Federal LIBOR transition legislation aligned with ARRC recommendations.

[36] Accordingly, as regards the discussion draft presented today, we also advocate for an expeditious regulatory process to choose a Board Selected Benchmark Replacement and confirm the spread adjustment so that market participants can move forward quickly with necessary updates to their systems, and a deep and liquid SOFR market with consistent market conventions across the various types of SOFR to be used in the broad array of cash products.