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REPORT
Futures & Derivatives Law
The Journal on the Law of Investment & Risk Management Products
September 2021 ▪ Volume 41 ▪ Issue 8

THE FUTURE DOMINANT REFERENCE RATE OF THE LOAN MARKET: WILL THERE BE ONE RATE TO RULE THEM ALL?

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On July 29, 2021, the Alternative Reference Rates Committee ("ARRC") of the Federal Reserve formally announced and recommended[1] CME Group's forward-looking Term Secured Overnight Financing Rate ("Term SOFR") rates.[2] Important to this announcement were the ARRC's previously published Conventions[3] and Scope of Use Cases,[4] and a subsequently published FAQ on Best Practices.[5] As noted by the ARRC in their Scope of Use Cases, one significant element to this announcement relates to the ARRC's preferred fallback language for bilateral and syndicated loans, which provides that the initial fallback rate is a forward-looking SOFR-based term rate (provided one has been recommended in the appropriate tenor). This announcement provides such recommendation, thus crystalizing the result that loans that include the ARRC's recommended fallback language should transition from LIBOR to a Term SOFR rate with the same tenor.

Another critical step forward in LIBOR transition relates to the fact the ARRC also endorsed the use of Term SOFR for the derivative markets in the limited case of end-user-facing derivatives intended to hedge cash products that reference the SOFR Term Rate.[6] Here, the ARRC recommended the use of Term SOFR swaps, caps, swaptions and similar derivatives to hedge exposure to a single loan or other cash product, or a portfolio of such exposures.

Up to the time of the ARRC's announcement, pick-up in the loan market of alternative non-LIBOR reference rates was slow and, likely surprising (if not worrisome) to the ARRC was the fact that the Bloomberg Short-Term Bank Yield Index ("BSBY") had appeared in more public agreements than a SOFR-based rate.[7] One factor causing parties to prefer BSBY over the then-available SOFR rates was that only BSBY was a forward-looking term rate. Thus, this resistance to

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use of SOFR may not have been a resistance to SOFR as a rate, but instead resistance to the use of an in-arrears rate and preference for a forward-looking term rate. By using a forward-looking term rate, the overall changes to existing documentation were less significant and less involved since many payment and calculation mechanics were left unchanged, leading some market participants to describe the modifications necessary to convert a LIBOR-based loan to a BSBY-based loan as "plug-n-play."

In addition to BSBY already being quoted as a forward-looking term rate, BSBY may have appeared, initially, a viable and "better" alternative to any SOFR rate, since it was a credit-sensitive rate, i.e., a rate that floats based on changes in bank credit risk, and therefore provides some indication of a bank's cost of funding. Unfortunately for BSBY, the use of BSBY was questioned by the chairman of the Securities and Exchange Commission,[8] which may have slowed/cooled initial movements by banks to issue BSBY-based products, despite criticisms of the chairman's statements.[9]

TERM SOFR VS. BSBY VS. AMERIBOR?

Now that Term SOFR is available, this author's expectation is that loan origination of non-LIBOR rates will have meaningful growth, and that growth will be in Term SOFR, BSBY and/or the American Financial Exchange's AMERIBOR® benchmark ("Ameribor"). Looking ahead, which rate will be the "best" or the most common? In other words, which rate will be the "new LIBOR" and which (if any) will be more akin to Prime—i.e., a floating rate that can be used, but its use is far less common than the primary benchmark rate.

The answer is not clear. Term SOFR will definitely benefit from the ARRC's endorsement and general global efforts to replace LIBOR with a "risk free rate." BSBY and Ameribor, alternatively, will seek to leverage the imbedded dynamic credit sensitivity and the existing familiarity with credit sensitive rates as an element that should allow lenders ("Lenders") to more easily explain the new rates to borrowers ("Borrowers") as similar to LIBOR. Below are a few thoughts on how various facts or issues with these rates could impact their overall adoption and/or give any particular rate an advantage when compared to the other rates.

In the end, will there be one rate to rule them all?

THE "WINNING" RATE WILL BE THE RATE WITH THE CHEAPEST HEDGE/SWAP?

I would expect the rate most commonly used by Lenders will be the floating rate that can be swapped out for the lowest fixed rate. Here, I am assuming that most Borrowers will be less focused on the nature of the floating rate, and more focused on the cost of any hedge since the overall cost of the loan is often mostly the result of (i) the margin/spread plus (ii) the cost of the hedge based on the "Fixed Rate" the borrower will have to pay (or the cost of the interest rate cap).

Here, a borrower will just add together the rate in (i) and (ii) (the "All-In Rate") and will select the reference rate with the lowest All-In Rate. While much of the focus here may be on element (ii)—i.e., the Fixed Rate on the Borrower's hedge—the value in (i) will likely be different across all rates for the same Borrower, due to (a) SOFR being lower than a credit sensitive rate

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such as BSBY and Ameribor, and (b) between BSBY and Ameribor, BSBY's credit adjustment is generally smaller (generally, tracking less than LIBOR) and more appropriate for larger regional and national banks, and Ameribor is larger (generally, tracking greater than LIBOR) and more appropriate for small, medium and regional banks, though the differences here are small.[10]

In an environment where Term SOFR and BSBY rates are compressed and almost equal, the advantage here is for BSBY since Lenders will need to add a credit adjustment to Term SOFR. When this credit adjustment is added, will Term SOFR > BSBY? If "yes," then that gives some advantage to BSBY.

As for Ameribor, this reference rate is generally tracking higher than LIBOR (BSBY is traditionally a few basis points lower, but less volatile than LIBOR). Community and regional bank Lenders, however, may see Ameribor as a better approximation for their cost of funding,[11] and as a result, be willing to offer this rate with a lower margin/spread than it would on a Term SOFR or BSBY loan. If funding the same loan based on SOFR or BSBY, such Lenders will (SOFR) or may (BSBY) add some basis points to the margin/spread as insurance against those instances where the reference rate would drop below such Lenders' cost of funding. However, since the banks that are expected to be interested in Ameribor loans are not registered swap dealers ("Swap Dealer"), due to their small size in assets and regional footprint, whether the Ameribor swap market will pick up is a real uncertainty and likely driven largely by whether Swap Dealers and other financial institutions conclude that offering this product to these smaller institutions ("Swap Providers") is profitable and a manageable risk.

ISSUES WITH TERM SOFR SWAPS—DEALERS WILL HAVE MISMATCH ISSUES

Although a Lender will be able to package a Term SOFR Loan and a swap referencing Term SOFR ("Term SOFR Swap"), because Term SOFR Swaps are not available for dealer-to-dealer swaps (or any non-end-user or speculator) in some cases the Lender will now be hedging the Term SOFR Swap with a SOFR compounding in-arrears swap. This will cause a mismatch between the two cash flows, that could be greater or less than payment amounts owed vs. payment amounts received. This mismatch may increase the costs (i.e., increase the "Fixed Rate" in the hedge) on a Term SOFR Swap, so the Lender can capture some profit that will be used to cover risks associated with this mismatch. Alternatively, a Lender may find other methods to internalize this risk.

Lenders, however, should not assume given their status as a financial institution (or even if the Lender is a swap dealer), that such status definitively means it cannot hedge the Term SOFR Swap with another Term SOFR Swap. As further discussed below, there are some Lenders who will not have this mismatch issue, but the trade-off here will be a requirement that their activities in the swap market remain limited such that the institution does not make markets in the interdealer market or make two-way prices in interest rates derivatives.

Overall, this should be top of mind for Lenders. Lenders must determine if their activities in the derivatives market are sufficiently limited to permit the Lender to maintain a "matched book" or "flat book," and if not, then such Lender must determine how this mismatch will be addressed.

The Floating Amount received by a Swap Dealer/Provider based on SOFR Compounding In-Arrears should be close to the amount owed by the Swap Dealer/Provider on a Term SOFR payment amount for a similar tenor/calculation period, but it will not be 1-for-1. Swap Dealers/Providers will need to determine how to hedge and handle issues where the floating amount received on the dealer-to-dealer swap is less than the Term SOFR payment amount on the Borrower's swap.

BSBY/AMERIBOR—NO MISMATCH, BUT LIQUIDITY IS STILL UNCERTAIN

BSBY and Ameribor should not have the mismatch risk, i.e., the Floating Rate in the Borrower's swap and the dealer-to-dealer swap can be the exact same. However, it is still uncertain what liquidity will look like in the dealer-to-dealer market, which impacts pricing.

SOFR benefits from the ARRC's support and the CFTC's "SOFR First" best practices, which should promote the growth in a SOFR swaps market. Even if Term SOFR Swaps have a mismatch risk, and this risk impacts pricing, it could be the case that the pricing impact is minimal due to SOFR-liquidity already creating tighter spreads and lower pricing. Lastly, if SOFR swaps have a clearing requirement, and BSBY/Ameribor swaps are never cleared (unless parties voluntarily elect to clear), this could greatly impact the market too. From my experience, banks tend to prefer hedging their portfolio of Borrower-facing swaps with cleared swaps, but if BSBY/Ameribor swaps are not subject to a clearing requirement, this may or may not impact the adoption of BSBY/Ameribor. Since exchange-traded swaps really go hand in hand with clearing, the exchange trading of SOFR swaps could further benefit SOFR pricing.

In short: BSBY/Ameribor will not have mismatch risk for any Lenders. In the dealer-to-dealer market, SOFR may have greater liquidity and be subject to clearing and exchange traded requirements. It will be interesting to see the difference between the Fixed Rate on Term SOFR Swaps vs BSBY/Ameribor swaps, and if one has tighter spreads with overall better pricing for Borrower-facing swaps. Also, noted further below, maybe Swap Dealers/Providers will not hedge a BSBY/Ameribor swap differently than a Term SOFR—i.e., both Borrower swaps are priced based on the Fixed Rate in the Dealer-to-Dealer SOFR Market? If that is the case, maybe the Fixed Rate of the Borrower's swap is agnostic to whether the Floating Rate is Term SOFR, BSBY or Ameribor? Here, however, since Ameribor, is traditionally a rate higher than LIBOR (though only fraction of a basis point in the one-month tenor[12]), a Swap Dealer/Provider may be less inclined to internalize/manage this mismatch risk and, instead, require an Ameribor swap in its back-to-back swap. Additionally, for community and regional banks, it is more likely that, due to their size, these banks will be constrained and only able to offer the Borrower a swap rate for which it can obtain a perfect hedge without any mismatch. It is still unclear if they will find this in the Ameribor swap market.

IS A FINANCIAL ENTITY/INSTITUTION AN "END-USER?"

Prior to the ARRC's release of their FAQ on Best Practices, there was significant uncertainty associated with what entities constituted an "end

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user." While corporate entities were an obvious "end user," there were other entities where there was greater uncertainty. Afterall, not all end users make widgets.

For example, there are treasury affiliates, special securitization vehicles, cooperatives and other entities that are in the business of predominately engaging in financial activities but may think of themselves as "end users" due to their eligibility for an exemption often generalized as the "End-user Clearing Exemption." Until the FAQ on Best Practices, similar issues existed for the smaller banks. Small banks are eligible for the same exemption, which promoted a business model in which small banks executed uncleared swaps with a Swap Dealer who provided liquidity and assistance to such small bank in executing mirroring swaps with the small bank's borrower. This model ensured the small bank's swap books were always "matching" or "flat"—i.e., perfectly hedged without any mismatch.

The ARRC's FAQ on Best Practices provided some much needed certainty to these financial entities, clarifying that some financial institutions can use Term SOFR Swaps to hedge their borrowerfacing swaps, provided their overall market activity meets certain requirements.

WHAT IS AN "END USER?"

Identifying who is an "end user" is critical for Term SOFR Swaps. The permitted use of such swaps is supposed to be limited to end-user facing derivatives intended to hedge loans and other cash products referencing Term SOFR. The specific end user that may enter into the swap includes any direct party or guarantor to a new Term SOFR business loan or securitization linked to Term SOFR assets, or to a legacy LIBOR product that has converted to Term SOFR through contractual fallback language or legislation.

The FAQ on Business Practices made clear that the term "end user" could be a term that includes a lender or a borrower. In respect of a lender qualifying as an end user, the ARRC noted that there are some lending institutions "not structured to make markets or warehouse the risk of offering derivatives products to end users."[13] Per the ARRC, such lending institutions may execute Term SOFR derivatives with a borrower, and hedge such risk with another Term SOFR Swap in the dealer-to-dealer market provided such lending institution "does not make two-way prices in interest rate derivatives and is not a market maker in the interdealer market for such derivatives in the regular course of its business."[14] In short, lending institutions, including swap dealers, that use offsetting derivatives to main a matching/flat book may continue to do so with Term SOFR Swaps.

For non-lending entities—i.e., the borrowers—the ARRC did not provide a formal definition. However, given the clarification around the scope of lending institutions which may use Term SOFR Swaps, Lenders should anticipate that those entities which have traditionally elected the End-User Clearing Exception (or other exceptions) for their interest rate hedges, such entities should be eligible to execute Term SOFR Swaps. Such guidance, however, has not been formally stated. As a result, Lenders should continue to be vigilant and monitor market practice and formal/informal regulatory guidance.

SMALL BANKS WILL USE BSBY?

SOFR-based rates are a closer indication of

cost of funding for larger institutions that hold large reserves of treasuries (and can, therefore, be thought of as often lending against treasuries). For community and regional banks, there may be a preference for BSBY or Ameribor, since both provide a closer approximation to such institutions' actual cost of funding any loan. Here, the "winner" between BSBY and Ameribor may ultimately be whichever has the least expensive hedge. Ameribor will better track the institution's cost of funding, but if the All-In Rate for BSBY is more attractive/sellable than Ameribor, this could push smaller banks to BSBY. With that said, Ameribor is a better approximation for their cost of funds, and as noted earlier, this may mean that the "margin" added to Ameribor is lower than that added to BSBY. As a result, the All-In Rate for an Ameribor loan may be the lowest.

Either way, BSBY or Ameribor, this rate will more closely match smaller and regional banks' dynamic cost of funds over the life of the loan, and (1) they will want a 1-for-1 match and (2) many may not have systems in place to confirm any compounded in-arrears calculation or otherwise just prefer to not have cash flow management based on this sort of in-arrears or risk-free floating rate calculation.

Additionally, to the extent the permitted use of Term SOFR itself becomes something of a moving or more ambiguous target—e.g., a regulator's or CME's guidance states a decreased scope of permitted uses or creates more uncertainty as to permitted uses—then frustrations associated with tracking and documenting the "appropriate" use of Term SOFR may also increase demand for BSBY and Ameribor. This demand could give Ameribor and BSBY a major advantage, particularly if one or both appear easier to implement during a time when resources focused on regulatory, compliance and technology are already strained.

This could increase demand and liquidity in the BSBY/Ameribor swaps market, thereby pricing the Fixed Rate on these swaps at a lower rate.

CREDIT SENSITIVE RATES OTHER THAN BSBY/ AMERIBOR?

All of these talking points about BSBY or Ameribor apply similarly to any other credit sensitive rates, but at this point it seems like the only rates that have built any traction in the U.S. market are BSBY and Ameribor. This also means that if a bank considered a credit sensitive rate other than BSBY or Ameribor, there is an even greater chance that a swap referencing such rate is far less liquid and more expensive. For this reason, rather than constantly referring to "Credit Sensitive Rates" in this article, this article is focused on BSBY and Ameribor.

REGULATORY CONCERNS WITH BSBY?

Based on various conversations and industry calls, there appears to be a general view that: There is no regulatory risk with BSBY—i.e., no central bank or other regulator is going to make BSBY illegal or otherwise go away, in an effort to promote SOFR.[15] It seems like many people (other than just the author of this article) were also very critical of the comments of Gary Gensler, chairman of the Securities and Exchange Commission, as being misleading/inaccurate. One more surprising element of caution were recent statements from the Board of the International Organisation of Securities Commissions

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("IOSCO"), in which IOSCO urged caution regarding the use of credit sensitive rates to replace LIBOR and highlighted the importance of transitioning to risk-free rates such as SOFR.[16] However, since IOSCO's principles are self-certified by the index providers, the statement may have little impact other than leaving some to question whether IOSCO's statement are more of a political effort to limit the growth of credit sensitive rates and/or if the index providers' data supporting their IOSCO certifications should be challenged.

WHAT ABOUT DAILY SIMPLE SOFR?

I am not sure non-term rates will have much use in the loan market today, particularly in the middle market. From my experience and conversations, borrowers were unwilling to agree to a rate in which they would not have certainty regarding any payment amount until two to five business days before the payment date. Even if hedged, often borrowers are hedging less than 100% (e.g., 70% hedged, leaving 30% of the loan's principal amount unhedged), so the cash requirements of the unhedged portion continue to be in focus. Going forward, will Borrowers still resist the in-arrears rate Daily Simple SOFR?

Here, maybe Daily Simple SOFR gains traction if Borrowers notice that, traditionally, Term SOFR is overestimating Daily Simple SOFR. "Term SOFR > Daily Simple SOFR" should be the case, since Term SOFR should more closely align with SOFR compounded in-arrears. Additionally, in the derivatives market, the Fixed Rate on a Term SOFR Swap is slightly higher than that for an interest rate swap hedging Daily Simple SOFR. This means a Borrower may save money on a Daily SOFR loan versus a Term SOFR loan (1) with respect to any unhedged interest payments and (2) with respect to the Fixed Rate on the swap. However, the question here will be: Will that delta be enough to make a difference to a Borrower? Alternatively, if the Borrower has no issues with managing the payment requirements of Daily Simple SOFR, the borrower may prefer this rate today, but given the limited Daily Simple SOFR loans today, this seems unlikely until Borrowers are more familiar with SOFR and the new menu of non-LIBOR rate options.

ANY OTHER REASONS TO PREFER BSBY/AMERIBOR OR TERM SOFR?

Yes. If only focused on a loan portfolio, Term SOFR will (likely) always be lower, but that is why the "SOFR Adjustment" is there. Lenders may want to start comparing how BSBY/Ameribor vs. Adjusted Term SOFR Rate compare, and Lenders may want to develop their own in-house "SOFR Adjustment," which could vary based on the term of the loan itself.

For example, in today's rate environment for a short-term loan, the adjustment may be lower than that we see in Bloomberg's standard adjustment[17] based on expectations that the difference between LIBOR and SOFR between now and July 2023 will remain less than Bloomberg's adjustment. Looking more long term, Lenders will need to consider their own views as to the appropriate adjustment, since it will be an important factor in a Term SOFR's All-In Rate.

Today, given how close in value Term SOFR is to BSBY/Ameribor, the All-In Rate for a Term SOFR loan that uses Bloomberg's standard ad-

justment may be higher than the All-In Rate for a BSBY loan. Ameribor (since this rate is generally higher than LIBOR) should not benefit as much from compressed rates, but as noted above, it should benefit from a lower margin/spread on the loan when compared to the same bank considering the SOFR Adjustment to add to Term SOFR. Alternatively, depending on the tenor of Ameribor, if the Ameribor is tracking only fractions of a basis point higher than a similar tenor of LIBOR or BSBY, maybe BSBY and Ameribor loans have equal spreads/margins, causing the swap market to be deciding factors for the rate that will have the greatest demand from Borrowers.

The concern for Ameribor will largely focus on the cost of the hedge. Ameribor is not indicative of the cost of funding for larger banks,[18] and since this should mean fewer (if any) large banks will offer many Ameribor products and the same institutions that are Swap Dealers will have less of an incentive to offer and develop Ameribor hedges to achieve a liquid market. Ameribor's success therefore may depend on how cost effectively Swap Dealer's manage Ameribor risk with more liquid products (e.g., SOFR in arrears or BSBY).

SOFR is also manipulated by the Federal Reserve Bank,[19] so in times of stress the Federal Reserve Bank can force this rate to drop and keep the rate there. When this happens, it can result in SOFR dropping below a Lender's cost of funding, as seen during the start of the COVID-19 crisis last year.[20] The SOFR Adjustment is intended to help with this, but as parties will compete based on the margin added to Term SOFR, this is also a natural place to "knock off" a few basis points. By doing so, this increases the risk to the Lender that more and more of the cash inflow from the margin will <u>not</u> represent net profit, but instead represent revenue used to cover costs.

An artificially low SOFR could negatively impact a loan portfolio that could otherwise better perform if the same loans were priced based on BSBY or Ameribor. On the flipside, the more an institution has exposure to swaps, the lower rate environment would increase the likelihood that the Borrower-facing swaps are in-the-money to the Swap Dealer/Provider (but the Swap Dealer/Provider's portfolio hedges are out-of-the-money, so this may have no meaningful profit element).

Overall, maybe the questions and focus on deciding which single rate will replace LIBOR is misplaced. Isn't that setup a large reason we are in this situation: An overreliance on a single benchmark? Maybe a bank is "best positioned" for both (a) its loan portfolio and (b) mitigating benchmark risks related to long-term use, if it has exposure to <u>multiple rates</u>.

If more Lenders are considering different rates for different products (e.g., Term SOFR for syndicated loans and BSBY/Ameribor for middle-market bilateral loans), the swaps market may develop with similar liquidity and pricing options. That scenario is more likely if Swap Dealers/Providers decide to have an agnostic view regarding how to hedge a Borrower's swap. This could be the case since Term SOFR (plus a credit adjustment), BSBY and Ameribor all roughly track each other (because both are an approximation of LIBOR). If all three rates are roughly the same, then maybe a swap desk gets comfortable with not caring if the Borrower swap is Term SOFR, BSBY or Ameribor for pricing

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purposes, because any effort to hedge/price that risk will depend on the Fixed Rate in the Dealer-to-Dealer SOFR compounding in-arrears market.

In the short term, maybe the right "hedge" for a Lender is to offer multiple rates so the Lender is best positioned to adjust its products as the market continues to develop. Long term, maybe the correct view as a matter of "safety and soundness" for any Lender is to maintain a mixed portfolio of reference rates based on certain rates as being more appropriate for certain markets.

For the Borrowers, maybe there is never one rate to rule them all, but instead different strokes for different folks.

ENDNOTES:

[1] https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Press_Release_Term_SOFR.pdf.

[2] https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html.

[3] https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/Term_SOFR_Avgs_Conventions.pdf.

[4] https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Scope_of_Use.pdf.

[5] https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC-Scope-of-Use-FAQ.pdf.

[6]"The ARRC **does not support the use of the SOFR Term Rate for the vast majority of the derivatives markets**, because these markets already reference SOFR compounded in arrears and transitioning derivatives markets to the more robust overnight risk-free rates (RFRs) is essential to ensure financial stability as emphasized by the Financial Stability Board. The ARRC recommends that any use of SOFR Term Rate derivatives be limited to end-user facing derivatives intended to hedge cash products that reference the SOFR Term Rate. This limitation is intended to avoid use that is not in proportion to, or materially detracts from, the depth of transactions in the underlying derivatives markets that are essential to the construction of the SOFR Term Rate over time." *See*, Scope of Use Cases.

[7]*See also, Libor's US replacements: no one rate to rule them all,* Financial Times (June 3, 2021), available at https://www.ft.com/content/e5f1ebbb-2e7b-46cc-88ce-b0a1c48ea1ee.

[8]*See*, Chair Gary Gensler, *Prepared Remarks Before the Financial Stability Oversight Council* (June 11, 2021), *available at* https://www.sec.gov/news/public-statement/gensler-fsoc-libor-2021-06-11.

[9]*See*, Coffey, Meredith, *LIBOR TRANSITION: DEBATING THE "MULTI-RATE" FUTURE* (July 8, 2021), *available at* https://www.lsta.org/news-resources/libor-transition-debating-the-multi-rate-future/; *see also*, Ivey, Edward, *SEC Chairman Questions the Use of BSBY* (June 18, 2021), *available at* https://www.jdsupra.com/legalnews/sec-chairman-questions-the-use-of-bsby-3691345/.

[10]*See*, *Introducing Bloomberg Short-Term Bank Yield Index (BSBY)* (November 16, 2020) (provides a comparison of BSBY vs LIBOR, noting that BSBY generally is slightly lower than LIBOR); *AMERIBOR® Term-30 White Paper, August 12, 2021* (for Ameribor Term-30, noting that Ameribor generally tracks slightly higher than one-month LIBOR, with an average spread of -.0049% and median spread of -.0003%); *see also*, infra Endnote 14.

[11]While BSBY also offers some approximation for a bank's cost of funding, it is more accurate for larger banks and similar to LIBOR's approximation. Ameribor is intended to reflect small, medium and regional banks' cost of funding across the United States. *Infra*, Endnote 18.

[12]See *Id.* (discussion of Ameribor).

[13]*Supra*, Endnote 5.

[14]*Id.*

[15]*See also*, Bartholomew, Helen, *Federal*

tough legacy fix gives nod to alternative rates (August 4, 2021), *available at* https://www.iosco.org/library/pubdocs/pdf/IOSCOPD683.pdf.

[16] https://www.iosco.org/library/pubdocs/pdf/IOSCOPD683.pdf.

[17]See, https://assets.bbhub.io/professional/sites/10/IBOR-Fallbacks-LIBOR-Cessation_Announcement_20210305.pdf.

[18]As stated in the American Financial Exchange's brochure regarding Ameribor, this rate "reflects the actual borrowing costs of thousands of small, medium and regional banks across America." *See* https://ameribor.net/.

[19]*See*, Foster, Sarah, *The repo market, explained—and why the Fed keeps pumping hundreds of billions into it* (April 29, 2020) available at https://www.bankrate.com/banking/federal-reserve/why-the-fed-pumps-billions-into-repo-market/.

[20]*See*, Smith, Robert Mackenzie, *Credit problem: SOFR faces uphill struggle in loan market* (June 16, 2020) ("The main issue lenders have with SOFR is that it lacks a credit component and does not always reflect their marginal cost of funds. As a result, lending could become unprofitable during periods of economic stress, when funding costs tend to diverge from risk-free rates.").

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