FAQs Regarding New York State LIBOR Legislation
Dated December 3, 2021

Background

In March 2021, the ARRC proposed updated language for legislation addressing the LIBOR transition, which served as a model for legislation that has been enacted by the states of New York[1] and Alabama[2] ("State LIBOR Legislation").[3] The State LIBOR Legislation includes provisions that refer to recommendations made by the ARRC (or another "Relevant Recommending Body"), as further described below.[4]

The ARRC is publishing these FAQs pertaining to the above topics and, from time to time, intends to make the formal recommendations that are contemplated by the State LIBOR Legislation. Certain of these recommendations, such as the "Recommended Benchmark Replacement" and the "Recommended Spread Adjustment," are also relevant to the recommended contract fallback provisions for new issuances published by the ARRC (the "ARRC-Recommended Contract Language").

These FAQs are based on the version of the State LIBOR Legislation passed in New York as it was the first to be enacted and has served, and is expected to continue to serve, as a model for additional State LIBOR Legislation.

A. Scope of the New York State LIBOR Legislation

1. What contracts are within scope of the New York State LIBOR Legislation?

First, the New York State LIBOR Legislation applies only to contracts governed by New York law. Second, whether the Legislation applies to a particular contract does *not* depend upon what *type* of contract it is (e.g., a security, loan, mortgage, swap, etc.), but rather depends upon whether and how provisions in the contract deal with the replacement of LIBOR (known as "fallback provisions").

As further described below, three types of contracts (based upon their fallback provisions) are within the Legislation's scope—namely, those contracts that, on the Legislation's "LIBOR Replacement Date":

- lack any fallback provisions;

1 Article 18-C of the New York General Obligations Law.

2 Title 5, Chapter 28 of the Code of Alabama 1975.

3 As of the date of these FAQs, Congress is considering federal legislation that would address LIBOR transition for contracts governed by the law of any State. The ARRC plans to address questions about the federal legislation at a later date.

4 As to any contracts not governed by such Legislation or applicable laws, adoption of the selections and recommendations made by the ARRC is voluntary and, with respect to any such contracts, each market participant must decide for itself whether and to what extent it adopts those selections and recommendations.

- contain fallback provisions that lead to a replacement rate that is itself based on LIBOR; or

- require polling for interbank rates.

In addition to those three types of contracts, the Legislation also provides an optional safe harbor for contracts that contain fallback provisions that permit or require a party to select a replacement rate (if the scope of contractual discretion meets criteria specified in the statute).

The Legislation does not affect contracts whose fallback provisions result in the use of a specified, non-LIBOR-based replacement rate (such as the Prime Rate or the Federal Funds rate).[5] That includes contracts that incorporate versions of the ARRC-Recommended Fallback Language that result in the use of a specified replacement rate. Additionally, any contract that would be within the Legislation's scope can be taken out of scope by mutual agreement of the parties to the contract—a feature sometimes called the "opt-out."

B. Application of the New York State LIBOR Legislation

1. How does the New York State LIBOR Legislation apply to contracts within its scope?

Contracts that lack any fallback provisions (that is, "silent" contracts)

For contracts that are silent on how to address LIBOR cessation, the New York State LIBOR Legislation requires the Recommended Benchmark Replacement to automatically replace LIBOR for all determinations of the benchmark occurring on and after the applicable LIBOR Replacement Date.

Contracts whose fallback provisions lead to a replacement rate that is itself based on LIBOR (including "Last LIBOR" fallbacks)

Many legacy LIBOR contracts, particularly floating rate securities, have fallback provisions that result in a replacement rate based on a LIBOR value (e.g., the replacement rate is the last-available LIBOR setting). If these fallbacks are applied in a scenario where LIBOR is permanently discontinued, the result would be to convert floating-rate instruments into fixed-rate instruments tied to the final published LIBOR value, which likely would be inconsistent with the fundamental purpose and intent of a floating-rate security. These securities are also difficult for parties to remediate privately, because amending their interest-rate provisions often requires obtaining unanimous consent from the holders. To address these contracts, the New York State LIBOR Legislation requires the Recommended Benchmark Replacement to automatically replace LIBOR for all determinations of the benchmark occurring on and after the applicable LIBOR Replacement Date.

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[5] Some contracts that already include robust fallback provisions include a spread adjustment derived from analyzing the historical spread between LIBOR and a viable replacement benchmark, such as the Prime Rate or the Federal Funds rate. The fact that a replacement rate may include such a spread adjustment does not mean that the replacement rate is "based . . . on" LIBOR or bring that contract within the scope of the Legislation. *See* Sections 18-401(5), 18-402(5).

Contracts that require polling for interbank rates

The fallback provisions of many legacy contracts include a step that requires a party to the contract to conduct a poll or survey of large dealer banks for LIBOR quotes. However, banks may be unlikely, after the end of LIBOR has been announced, to respond to such polls, or the results may not be representative. To relieve parties of this contractual obligation, the New York State LIBOR Legislation eliminated portions of fallback provisions that require a party to conduct polling of interbank lending rates. This does not invalidate replacement benchmarks that are produced by a benchmark administrator, even if the benchmark is based on polling by the benchmark administrator.

Parties to contracts that are subject to the Legislation thus should analyze their contract language as if any requirement for a party to conduct such polling were not present and evaluate the resulting fallback, if any. For example, if the fallback provisions that remain after ignoring the polling provisions do not result in any replacement rate, then the contract would be treated as a "silent" contract under the Legislation, as described above. On the other hand, if ignoring the polling provisions would cause another method for determining the replacement rate to become relevant under the remaining fallback provisions, then application of the Legislation would be based upon that method.

Optional safe harbor for contracts that permit or require the selection of a replacement rate

For contracts (such as many consumer contracts) where one party has the existing contractual right to choose a replacement rate, the New York State LIBOR Legislation does not alter these provisions of the contract. If the Recommended Benchmark Replacement falls within the scope of discretion permitted by the contract, then the New York State LIBOR Legislation offers a safe harbor if the party selects the Recommended Benchmark Replacement. On the other hand, the safe harbor does not apply if the contract's fallback provisions impose criteria that are not consistent with the use of the Recommended Benchmark Replacement or if the party with discretion simply chooses to use a different replacement rate. The New York State LIBOR Legislation defines the scope of criteria that are consistent with the choice of the Recommended Benchmark Replacement by cross-referencing Section 18-402(1), which identifies attributes that the Recommended Benchmark Replacement is deemed to have when it is implemented pursuant to the Legislation. In either case, the Legislation does not prohibit the selection of a replacement rate other than the Recommended Benchmark Replacement, however such selected replacement rate would not have the Legislation safe harbor available to the selecting party.

2. Does the New York State LIBOR Legislation apply to contracts that fall back to a "Base Rate"?

No. Many loan agreements have fallback provisions that result in the application of a "Base Rate" that is defined to be the greater of two or three replacement benchmarks, such as the Prime Rate, the Federal Funds rate, and LIBOR. Contracts that contain this type of fallback provision are not within the scope of Section 18-401(1) of the New York State LIBOR Legislation and will not be transitioned automatically to the Recommended Benchmark Replacement. As Section 18-405(b) makes clear, contracts that contain a fallback provision capable of producing a rate that is not based on LIBOR, such as "the prime rate or the federal funds rate," are not within the scope of Section

18-401(1). The exclusion of these contracts is also consistent with the Legislation's intent to automatically transition to the Recommended Benchmark Replacement only those contracts that lack fallback provisions or that would fall back to a LIBOR-based rate.

3. Does the New York State LIBOR Legislation apply to swaps or other derivatives?

As with other types of contracts, whether the New York State LIBOR Legislation applies to a swap or other derivative depends on whether—and how—the contract deals with the replacement of LIBOR, as explained in Part A.

For many swaps and other derivatives, the ISDA IBOR Fallbacks Protocol provides an efficient way for parties to remediate their legacy contracts. As with other types of contracts, if a swap or other derivative is remediated by the parties—whether by adhering to the Fallbacks Protocol or by otherwise consensually amending the contract—the contract will not be subject to the Legislation.

The Legislation will apply to a swap or other derivative that falls within the scope of the Legislation (as set forth in Part A) that is not remediated by the parties. For those contracts, the ARRC intends to recommend use of a replacement rate and spread methodology that aligns with the Fallbacks Protocol.

C. Recommended Benchmark Replacement

1. Which version of SOFR will be used (compounded or simple, in arrears or in advance, term rate or overnight rates)?

The ARRC intends to formally recommend a SOFR-based benchmark replacement for various types of contracts, as contemplated by the Legislation. Currently, the ARRC has published Recommended Benchmark Replacements for the 1-week and 2-month LIBOR tenors, which are discussed in Part H.4 below. The ARRC has stated that it expects the remainder of these recommendations to be made no later than June 30, 2022. A summary of all of the ARRC's recommendations, through October 6, 2021, is available in a separate document.[6]

2. Will the ARRC's recommendations for the New York State LIBOR Legislation align with those for the ARRC-Recommended Contract Language?

Yes. The ARRC intends for its recommendations to produce similar results in contracts that incorporated the ARRC-Recommended Contract Language and contracts that are subject to the New York State LIBOR Legislation.

The ARRC-Recommended Contract Language was published so that new issuances of transactions could include more robust language to address the cessation of LIBOR. That language is forward-looking, in that it was designed to be included in contracts that would look to a subsequent recommendation by the ARRC based upon a waterfall of possible recommendations. On the other

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[6] ARRC, *Summary of the ARRC's Fallback Recommendations* (Oct. 6, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/spread-adjustments-narrative-oct-6-2021.

hand, for contracts within its scope, the Legislation applies the specific replacement benchmark and spread recommended by the ARRC as of the LIBOR Replacement Date. In both cases, once the ARRC recommends a Recommended Benchmark Replacement and Recommended Spread Adjustment, they will become applicable to contracts that reference the ARRC's recommendations, such as the ARRC's hard-wired fallback provisions, and to contracts within scope of the Legislation.

D. Spread Adjustment

1. What is the ARRC's Recommended Spread Adjustment?

Under the New York State LIBOR Legislation and the ARRC-Recommended Contract Language, a spread adjustment is added to the Recommended Benchmark Replacement.

The ARRC's recommended spread adjustments for non-consumer and consumer cash products will be the same as ISDA's spread adjustments for U.S. dollar LIBOR, which were fixed as of March 5, 2021. The ARRC will include a one-year transition period as part of its recommended spread adjustments for consumer products.

The ARRC has selected Refinitiv, a London Stock Exchange Group business, to publish its recommended spread-adjusted rates for cash products that contain ARRC-recommended fallback provisions. Refinitiv will make the spread-adjusted rates readily accessible on a daily basis to the general public without cost. [7]

E. Benchmark Replacement Conforming Changes

1. When will the conforming changes be published? What products will they cover?

The ARRC plans to make a formal recommendation, not later than June 30, 2022, of certain "Benchmark Replacement Conforming Changes" ("BRCCs") that will apply to each of the asset classes for which it has published ARRC-Recommended Contract Language. It may also publish additional BRCCs that would apply across products.

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[7] Additional discussion of the spread adjustment can be found in a previous set of Frequently Asked Questions and in the ARRC's announcement of the selection of Refinitiv. *See* ARRC, *Frequently Asked Questions* 14 (Apr. 27, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf; ARRC, *ARRC Announces Refinitiv as Publisher of its Spread Adjustment Rates for Cash Products* (Mar. 17, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/20210317-press-release-Spread-Adjustment-Vendor-Refinitiv.pdf.

F. LIBOR Discontinuance Event

1. Has a LIBOR Discontinuance Event occurred under the New York State LIBOR Legislation?

As the ARRC has previously noted,[8] the March 5, 2021 announcements by ICE Benchmark Administration and the U.K. Financial Conduct Authority constitute a "Benchmark Transition Event" with respect to all USD LIBOR settings under ARRC-Recommended Contract Language. For purposes of the New York State LIBOR Legislation, the announcements by IBA and the FCA constitute a "LIBOR Discontinuance Event" as of March 5, 2021.

G. LIBOR Replacement Date

1. What is the LIBOR Replacement Date for each tenor of LIBOR?

The LIBOR Replacement Date under the New York State LIBOR Legislation is either the date that the LIBOR administrator "permanently or indefinitely ceases to provide" the tenor or tenors of LIBOR referenced by a contract or the date that the LIBOR administrator's regulator publicly states that such tenor of LIBOR is no longer representative.

ICE Benchmark Administration, which publishes LIBOR on each London business day, has announced that it will cease publication on a representative basis for the 1-week and 2-month USD LIBOR tenors "with effect immediately after" Friday, December 31, 2021, and that it will cease publication on a representative basis for all other USD LIBOR tenors "with effect immediately after" Friday, June 30, 2023.

As a result, the LIBOR Replacement Date for the 1-week and 2-month USD LIBOR tenors will be the first London business day after December 31, 2021, and the LIBOR Replacement Date for all other USD LIBOR tenors will be the first London business day after June 30, 2023.

For contracts that reference the 1-week or 2-month USD LIBOR tenors, but permit the choice of other, remaining tenors—or permit the 1-week or 2-month tenors to be interpolated from remaining tenors—the cessation of publication on a representative basis of the 1-week and 2-month tenors will not immediately cause a LIBOR Replacement Date. Contracts that reference the 1-week and 2-month tenors are discussed in more detail in Part H below.

2. Does the New York State LIBOR Legislation require the interest rate on my contract to be reset on the LIBOR Replacement Date?

No. If the Recommended Benchmark Replacement applies to a contract according to the New York State LIBOR Legislation, it does not require interest to be reset on the LIBOR Replacement Date. Rather, the Recommended Benchmark Replacement will be used for each reset date occurring under the contract on and after the LIBOR Replacement Date. For example, if the interest rate on a contract is required to be reset at 3-month LIBOR on the first business day of

[8] ARRC, *ARRC FAQs Regarding the Occurrence of a Benchmark Transition Event* (Mar. 8, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Benchmark_Transition_Event_FAQs.pdf.

June 2023 and every three months thereafter, the benchmark will not be changed to the Recommended Benchmark Replacement on the first London business day after June 30, 2023. Rather, the Recommended Benchmark Replacement will be used on the next reset date, which would occur in September 2023, and each reset date thereafter.[9]

H. 1-week/2-month USD LIBOR cessation

Publication of 1-week and 2-month tenors of USD LIBOR will cease on the first London business day after December 31, 2021. The impact of this event under the New York State LIBOR Legislation is described below.

1. If a contract requires payment in 1-week or 2-month LIBOR, is interpolation between remaining tenors required?

The New York State LIBOR Legislation does not impose a requirement to interpolate. On the other hand, it does not interfere with contracts that require interpolation of remaining LIBOR tenors (through adherence to the ISDA Protocol or otherwise) in place of a 1-week or 2-month LIBOR tenor.

2. If a contract that permits the selection of 1-week or 2-month LIBOR also permits the selection of other tenors, does the New York State LIBOR Legislation permit the use of the other tenors?

If, at the time the 1-week and 2-month LIBOR tenors cease to be published on a representative basis, a contract, such as a loan, permits the borrower to choose among other tenors of LIBOR that are still available, a LIBOR Replacement Date will not occur at that time for that contract and those other tenors may continue to be used.

3. What happens if neither of the above circumstances apply to a contract that references 1-week or 2-month LIBOR?

If the contract does not require interpolation and does not permit the selection of any LIBOR tenor other than 1-week or 2-month, then the Recommended Benchmark Replacement will apply under the New York State LIBOR Legislation.

4. What is the Recommended Benchmark Replacement for 1-week and 2-month LIBOR contracts?

The Recommended Benchmark Replacement depends on the nature of the contract's existing LIBOR fallback provisions (if any) and the product category of the contract. For further details,

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[9] While the Legislation does not treat the LIBOR Replacement Date as a reset date, conforming changes implemented under the Legislation (called Benchmark Replacement Conforming Changes) may alter the reset date. For example, conforming changes may adjust the business-day convention applicable to the reset dates on which the Recommended Benchmark Replacement will be used.

see the *Statement of the Alternative Reference Rates Committee as the "Relevant Recommending Body" under State LIBOR Legislation with respect to 1-week and 2-month USD LIBOR tenors*.[10]

5. How does the New York State LIBOR Legislation's treatment of 1-week and 2-month LIBOR interact with the ISDA IBOR Fallbacks Protocol?

The ISDA IBOR Fallbacks Protocol and the accompanying IBOR Fallbacks Supplement require interpolation of 1-week or 2-month LIBOR through the use of remaining LIBOR tenors. As described in Part H.1 above, the New York State LIBOR Legislation does not interfere with contracts that require interpolation.

For derivatives to which neither the Protocol nor the Supplement applies (and which have not otherwise been remediated), the Legislation will apply the Recommended Benchmark Replacement to those derivatives. Note, however, that the Recommended Benchmark Replacement for 1-week and 2-month LIBOR tenors will not be based on interpolation of other LIBOR tenors because the Legislation requires the Recommended Benchmark Replacement to be "based on SOFR."

I. Implementation of the Recommended Benchmark Replacement

1. If a LIBOR contract applied a cap, floor, margin, or rounding convention to LIBOR, will it apply to the Recommended Benchmark Replacement?

Yes. The New York State LIBOR Legislation expressly does "not alter or impair" the applicability of "any cap, floor, modifier, or spread adjustment to which LIBOR had been subject."[11]

2. My LIBOR contract required the use of LIBOR values published at a specific source, such as a newspaper or a specific screen on a software platform. From where will the Recommended Benchmark Replacement be sourced?

SOFR-based replacement rates are available from a number of sources. For example, Refinitiv (the vendor the ARRC selected to publish its recommended spread-adjusted rates for cash products) publishes SOFR-based fallbacks for institutional cash products in a variety of versions and intends to publish fallbacks for consumer products beginning in 2022.[12] The Federal Reserve Bank of New York publishes compounded averages of SOFR for three LIBOR-equivalent tenors.[13] And ISDA

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[10] ARRC, *Statement of the Alternative Reference Rates Committee as the "Relevant Recommending Body" under State LIBOR Legislation with respect to 1-week and 2-month USD LIBOR tenors* (December 3, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC-Statement-LIBOR-tenors-Legislation.pdf.

[11] § 18-401(5)(d).

[12] Refinitiv, *Refinitiv Launches USD IBOR Institutional Cash Fallbacks in Production to Facilitate Industry Transition from USD LIBOR* (Nov. 30, 2021), https://www.refinitiv.com/en/media-center/press-releases/2021/november/refinitiv-launches-usd-ibor-institutional-cash-fallbacks-in-production-to-facilitate-industry-transition-from-usd-libor.

[13] Fed. Reserve Bank of N.Y., *SOFR Averages and Index Data*, https://www.newyorkfed.org/markets/reference-rates/sofr-averages-and-index.

selected Bloomberg Index Services Limited to calculate certain fallbacks referenced in its documentation.[14]

The source from which a party should obtain the Recommended Benchmark Replacement applicable to that party's contract will depend on which Recommended Benchmark Replacement is recommended for that contract. For example, in the ARRC's *Statement* on the 1-week and 2-month LIBOR tenors,[15] the Recommended Benchmark Replacement for consumer products is a simple average of SOFR in arrears as published by Refinitiv.[16] That means that consumer products subject to the *Statement* would obtain the Recommended Benchmark Replacement from Refintiv. Parties to contracts for other, non-consumer, cash products may have the option of referring to one of the range of Institutional spread-adjusted rates that Refinitiv publishes, but they may also have the option of using other potential data sources.

By comparison, for contracts that already contain an existing, contractual right to choose a replacement rate, the *Statement*'s Recommended Benchmark Replacement comprises multiple, permissible rates and does not dictate a single source from which those rates must be obtained. That gives the party who has authority under the contract to choose the replacement rate the flexibility to select from among those recommended rates and receive the benefit of the New York State LIBOR Legislation's safe harbor. Included in that flexibility is the flexibility to choose the source from which to obtain the selected rate.

3. After the LIBOR Replacement Date, do I use the Recommended Benchmark Replacement if my LIBOR contract refers to a valuation or observation date prior to the LIBOR Replacement Date on which LIBOR was available?

Yes. For any LIBOR contract within the scope of subsection (1) of § 18-401 of the New York State LIBOR Legislation (*i.e.*, contracts to which the Recommended Benchmark Replacement will automatically apply), the Legislation provides that, "[o]n the LIBOR replacement date, the Recommended Benchmark Replacement shall, by operation of law, be the benchmark replacement" for that contract. That means that the Recommended Benchmark Replacement will, on that date, "replace LIBOR" in that contract[17] and thus will be used for any benchmark determinations on and after the LIBOR Replacement Date.

Similarly, for any LIBOR contract where one party has the existing contractual right to choose a replacement rate and that party is eligible for and chooses to avail itself of the Legislation's safe harbor, subsection (3) of § 18-401 of the Legislation provides that the Recommended Benchmark

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14 Bloomberg Index Servs. Ltd., *Fact Sheet: IBOR Fallbacks* (2021), https://assets.bbhub.io/professional/sites/10/Factsheet-IBOR-Fallbacks.pdf.

15 *See supra* note 10.

16 *See* ARRC, *ARRC Announces Refinitiv as Publisher of its Spread Adjustment Rates for Cash Products* (Mar. 17, 2021), https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/20210317-press-release-Spread-Adjustment-Vendor-Refinitiv.pdf.

17 *See* § 18-401(1)(7) (definition of "Benchmark Replacement").

Replacement "shall be . . . used in any determinations of the benchmark under or with respect to such contract, security or instrument occurring on or after the LIBOR replacement date."

J. "Synthetic LIBOR"

1. Would "synthetic LIBOR" change the impact of the New York State LIBOR Legislation?

No. "Synthetic LIBOR" refers to the possibility that the FCA could decide, at a later date, to use its powers to compel the LIBOR administrator to publish 1-month, 3-month, 6-month, or 12-month USD LIBOR tenors on a synthetic basis for a limited period of time after publication of representative LIBOR has ceased. The FCA has stated that any synthetic form of LIBOR would not be representative, so the implementation of synthetic LIBOR would not delay the triggering of a LIBOR Replacement Date, because one of the triggers for a LIBOR Replacement Date is an announcement that LIBOR is no longer representative.[18]

New York-law-governed contracts that are within scope of the New York State LIBOR Legislation on the LIBOR Replacement Date will successfully move off LIBOR, so they do not need the FCA's extended period for remediation beyond that date. The Legislation's impact on a given contract depends only on whether, on the LIBOR Replacement Date, the fallback provisions of the contract bring it within scope of the Legislation. The existence of synthetic USD LIBOR beyond that date would not change that treatment. For example:

- A contract that lacks any fallback provisions will transition automatically to the Recommended Benchmark Replacement on the LIBOR Replacement Date pursuant to Section 18-401(1)(a).
- A contract that falls back to the last-quoted LIBOR value when LIBOR is no longer available will transition automatically to the Recommended Benchmark Replacement on the LIBOR Replacement Date pursuant to Section 18-401(1)(b).
- A contract that gives a party the right to choose a replacement rate (within certain criteria) will transition to the Recommended Benchmark Replacement on the LIBOR Replacement Date pursuant to Section 18-401(3) (if the choice is made on or before that date).

In each of the foregoing examples, "transition . . . on the LIBOR Replacement Date" means that the Recommended Benchmark Replacement will replace LIBOR for all determinations of the benchmark occurring on and after the applicable LIBOR Replacement Date. See Section G.2 above.

Contracts that contain fallbacks to a specific, non-LIBOR-based replacement rate (such as the Prime Rate or Federal Funds rate) are outside the scope of the Legislation. For example, some contracts contain a fallback that requires the Prime Rate to replace LIBOR if LIBOR is no longer published at a designated source. For such contracts, the parties would need to determine whether

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[18] Fin. Conduct Auth., *FCA Announcement on Future Cessation and Loss of Representativeness of the LIBOR Benchmarks* 2 ¶ 7 (Mar. 5, 2021), https://www.fca.org.uk/publication/documents/future-cessation-loss-representativeness-libor-benchmarks.pdf.

the publication of LIBOR on a non-representative basis (i.e., synthetic LIBOR) affects whether and when the non-LIBOR replacement rate becomes applicable.

K. Constitutionality

1. Is the New York LIBOR Legislation consistent with constitutional principles?

Yes. Prior to the passage of the New York State LIBOR Legislation, the New York City Bar Association analyzed the Legislation under the Contracts Clause, Takings Clause, and Due Process Clause of the federal Constitution and the Takings Clause, Due Process Clause, and non-delegation doctrine of the New York State Constitution.[19] The NYC Bar Association concluded that the Legislation would survive a legal challenge based on any of those constraints.

The New York State LIBOR Legislation was carefully crafted to focus narrowly on contracts that lack any contingency for LIBOR or that are at risk of experiencing uneconomic or unintended consequences once LIBOR ceases to be published on a representative basis. These legislative frameworks also seek to minimize legal uncertainty, disputes, market disruption, and litigation from the LIBOR transition. The legislative framework is intended to address these problems while minimizing the impact on parties' contract rights and avoiding economic value transfers.

The approach the legislative framework takes—replacing LIBOR with a robust replacement rate designed to be comparable to LIBOR—is based on existing, common-law principles that would apply if individual contract parties resorted to the courts to resolve how the LIBOR transition impacts their contracts. By codifying these principles into legislation that specifically addresses the LIBOR transition, these legislative frameworks seek to spare contract parties—and the legal system—the burden, expense, and uncertainty of individualized adjudications.

Additionally, the New York State LIBOR Legislation was crafted to comply with constitutional provisions that forbid the legislative branch from delegating its policymaking authority. Accordingly, while the New York State LIBOR Legislation requires certain details to be determined by the Relevant Recommending Body, the fundamental policy decision of replacing LIBOR is still required to be based on the SOFR benchmark. That requirement limits the discretion granted by the legislature and ensures that no party outside the legislative branch is improperly delegated broad, legislative-like policymaking authority to choose among potential replacement rates and impose that choice—as a matter of law—on private parties.

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19 NYCBA, *Report on Legislation by the New York City Bar Association* (2021), https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/libor-replacement-legislation.