Securities Regulation Daily Wrap Up, TOP STORY—LIBOR bill would offer 'structural bridge' during benchmark transition, (Dec. 9, 2021)

Securities Regulation Daily Wrap Up

Click to open document in a browser

By Mark S. Nelson, J.D.

The bill would impact roughly $16 Trillion in financial instruments that need protection from the effects of having not specified a LIBOR replacement rate.

The House passed the Adjustable Interest Rate (LIBOR) Act of 2021 (H.R. 4616), sponsored by Rep. Brad Sherman (D-Calif), by a vote of 415-9. The impending discontinuance of the London Interbank Offered Rate (LIBOR) raises many issues about how the transition to a new standard, such as the Secured Overnight Financing Rate (SOFR), should work. The bill defines key terms and provides for safe harbor regarding legal liability for debt instruments that have or will need to specify a benchmark replacement. One of the bill's main goals is to avoid a flood of litigation over legacy debt instruments once the LIBOR changeover occurs. The amended bill was reported by the House Financial Services Committee in July 2021 by voice vote.

The purpose of the bill is threefold: (1) establish a uniform, nationwide framework to transition existing contracts that fail to mention a LIBOR replacement away from LIBOR to another benchmark rate (2) curb litigation over existing contracts; and (3) allow existing contracts that state a clearly defined fallback and practicable replacement rate to operate according to their terms. As a rule of construction, the bill would not discourage the use of any particular benchmark prospectively.

"The passage of this bill represents an instance of Congress proactively moving to fix an impending crisis," said Congressman Sherman, Chair of the House Financial Services Subcommittee on Capital Markets and Investor Protection. "Failure to transition away from LIBOR will leave parties unable to calculate the interest due on an estimated $16 trillion of debt instruments, a systemic risk to the economy." Representative Sherman added that the safe harbor provided by the bill will function as a "structural bridge" while financial contracts transition away from LIBOR.

The bill also had the support of the broker-dealer industry. Said Kenneth E. Bentsen, Jr., president and CEO of the Securities Industry and Financial Markets Association, via press release: "The legislation 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, and accordingly is supported not only by SIFMA, but also a range of other market participants, consumer groups, and regulators."

The Alternative Reference Rates Committee (ARRC), convened by the New York Fed, likewise expressed support for passage of the Sherman bill. "As we enter LIBOR's final days, this targeted solution will provide certainty not only to a diverse array of corporate borrowers and lenders, but to retail bondholders and consumers, whose student loans, mortgages, and investment accounts the legislation will protect from disruption and value degradation," said Tom Wipf, ARRC Chairman and Vice Chairman of Institutional Securities at Morgan Stanley.

MainStory: TopStory CommodityFutures CorporateFinance CorporateGovernance Derivatives FedTracker Securities FinancialIntermediaries GCNNews InternationalNews InvestorEducation RiskManagement Swaps