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Fed Panel Floats New Floater Fallback Language to Address Future Loss of LIBOR

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LIBOR is expected to be phased out by 2021 but US corporates continue to issue LIBOR-based floating-rate notes (FRNs). Although the defined term "LIBOR" in FRN indentures typically includes a fallback if LIBOR becomes unavailable, many market participants fear that the customary fallback will not work well when put to the test. Seeking to head off any market disruption that might occur as a result, on April 25 the Alternative Reference Rates Committee (ARRC), an industry-wide panel convened by the Federal Reserve and the New York Fed, published model LIBOR fallback language intended to dovetail with corresponding recommendations for syndicated loans, bilateral business loans, securitizations and ISDA derivatives. A company contemplating an FRN issuance in the near future will need to monitor the market to see whether ARRC's proposal begins to gain widespread acceptance, and if so whether the company's existing LIBOR replacement language has begun to look off-market and should be switched to the ARRC model in order to ensure smooth deal execution. Timely consultation with bankers and counsel should help minimize any delays to the deal timetable caused by needing to revise language in prospectuses, term sheets, indentures and forms of notes necessary to reflect the ARRC recommendations, and should help in the process of bringing senior management up-to-speed on the impact of the changes.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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