BLACK | MANN & GRAHAM L.L.P.

Attorneys At Law

17824 Mound Road, Suite C

Cypress, TX 77433

Phone: 713-871-0005

Fax: 713-871-1358

Partners

Gregory S. Graham [1]

Shawn P. Black [2]

Ryan Black [3]

Senior Lawyers

David F. Dulock

Diane M. Gleason

Daniel S. Engle [4]

Margaret A. Noles

Associates

Nick Stevens[5]

Syndy Davis

Ambria Wilmore

Of Counsel

David M. Tritter

Calvin C. Mann, Jr.

Thomas E. Black, Jr.[4]

Retired Partner(s)

Calvin C. Mann, Jr.

Thomas E. Black, Jr.[4]

1 Also Licensed in Georgia

2 Also Licensed in Kentucky and New York

3 Also Licensed in District of Columbia

4 Also Licensed in New York

5 Also Licensed in Oklahoma

July 29, 2022

To: Clients and Friends

From: David F. Dulock

Subject: Regulation Implementing the Adjustable Interest Rate (LIBOR) Act

In the July 28, 2022, issue of the Federal Register (87 FR 45268) the Federal Reserve Board ("Board") published a proposed regulation (12 CFR Part 253) that would implement the Adjustable Interest Rate (LIBOR) Act (Public Law 117–103, div. U., the "Act"). Division U starts on page 777 of the Consolidated Appropriations Act, 2022.

The proposed regulation would establish benchmark replacements for contracts governed by U.S. law that reference certain tenors (i.e., settings) of U.S. dollar LIBOR (the overnight and one-, three-, six-, and 12-month tenors) and that do not have terms that provide for the use of a clearly defined and practicable replacement benchmark rate following the first London banking day after June 30, 2023 (US dollar LIBOR ending date). The proposed rule also would provide additional definitions and clarifications consistent with the Adjustable Interest Rate (LIBOR) Act.

The Board is inviting comment on the proposed regulation, which must be submitted by August 29, 2022.

Interested parties may submit comments, identified by Docket No. R–1775, RIN 7100–AG34, by any of the following methods:

• *Agency website: https:// www.federalreserve.gov*.
Follow the instructions for submitting comments at *https://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.

• *Email: regs.comments@ federalreserve.gov.* Include docket and RIN numbers in the subject line of the message.

• *Fax*: (202) 452–3819 or (202) 452– 3102.

• *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

The Board invites comment on all aspects of the proposed rule. Additionally, the Board invites comment on the following specific questions related to the proposed rule:

• What, if any, alternative SOFR-based benchmark replacements should the Board consider for derivative transactions instead of Fallback Rate (SOFR) as defined in the ISDA protocol (e.g., a type of SOFR average)? What, if any, alternative SOFR-based benchmark replacements should the Board consider for covered GSE contracts instead of 30- day Average SOFR, such as SOFR term rates? What, if any, alternative SOFR-based benchmark replacements should the Board consider for other cash transactions instead of CME Term SOFR, such as a type of SOFR average or SOFR term rates that may be offered by a provider other than CME? Why would those alternatives be better choices than those indicated in the proposed rule? Should the Board identify a single Board-selected benchmark replacement for all covered contracts?

• Are there any categories of covered contracts for which the Board should consider an alternative SOFR-based Board-selected benchmark replacement? What aspects of the nature, circumstances, or characteristics (e.g., issuer type, lender type, borrower type, structure, use) of those contracts warrant consideration of a different SOFR-based benchmark replacement?

• What, if any, additional clarifications should the Board consider regarding the Board-selected benchmark replacements? Why would those clarifications be helpful?

• What, if any, additional clarifications should the Board consider regarding the definition of ''covered contract''? For example, should the Board clarify that § 253.3(a)(2)(ii)(B) of the proposed regulation—which generally nullifies any references in the fallback provisions of a LIBOR contract to a requirement that a person (other than a benchmark administrator) conduct a poll, survey, or inquiries for quotes or information concerning interbank lending or deposit rates— applies to a contract that requires a person to poll for ''Eurodollar'' deposit rates? What, if any, additional clarifications should the Board consider regarding other defined terms in the proposed rule?

• Is the proposed provision concerning the application of the proposed rule to non-covered contracts sufficiently clear? What, if any, additional clarifications should the Board consider with respect to noncovered contracts? For example, should the final rule address the ambiguity discussed above regarding LIBOR contracts with fallback provisions that lack an express non-representativeness trigger, perhaps by indicating that those contracts' fallback provisions would be triggered on the LIBOR replacement date?

• What, if any, additional clarifications, should the Board consider regarding selections of benchmark replacements by determining persons, including their ability to select a replacement on or before the LIBOR replacement date? For example, should the Board consider requiring a determining person to provide notice to one or more parties concerning the selection and, if so, what specific notification requirements would be appropriate and why? What, if any, potential litigation or other risks could result from such a notification requirement, and how might the Board address those risks?

• What, if any, benchmark replacement conforming changes should the Board consider (e.g., clarification regarding calculation of any contractual rate cap or floor in light of the Act's specified tenor adjustments, application of any contractual lookback period or other term related to determination of the precise applicable benchmark replacement rate)? Should those conforming changes apply to all covered contracts or just one or more categories of covered contracts?

• Should the Board incorporate into the regulation the statutory protections in section 105 [Continuity Of Contract And Safe Harbor] of the Act? If so, should the Board make any clarifications related to these statutory protections?

The proposed regulation and the Board's preamble explanations and statements are comprehensive and must be read in order to provide meaningful comments on the proposed regulation and the Board's specific questions.