# Bank of America (BofA) Benchmark Rate Transition Statement

## Introduction

A wide range of contracts, products, and services require payments or calculations to be made by reference to benchmark reference rates (**BRs**) or otherwise include provisions referencing BRs (*e.g.*, default interest and valuation/pricing provisions). In particular, BRs are used in mortgages, consumer, corporate, and commercial loans, derivatives, floating-rate notes, preferred securities, and other adjustable-rate products and financial instruments. The cessation of certain BRs could mean that a significant number of products referencing those BRs, including related hedging arrangements, must be transitioned or implement fallbacks to alternative reference rates (**ARRs**).

The London Interbank Offered Rate (**LIBOR**), the most widely used interest rate benchmark in the world, ceased to exist in its representative form as of June 30, 2023. Beyond LIBOR, administrators for certain other BRs have ceased or modified such BRs, or have announced their intention to cease or modify (including announcements of unavailability and/or changed calculation methodologies) such BRs, and similar announcement on other BRs could be made in the future (all such BRs, **Impacted BRs**). For example, the administrator of the Canadian Dollar Offered Rate (**CDOR**) has indicated that publication of all tenors of CDOR will permanently cease following June 28, 2024.

## Roadmap for Benchmark Rate Transition

The global transition away from LIBOR is the likely template for how official sector entities and private market participants would manage the transition of Impacted BRs in the future. In response to the announcement by the U.K.'s Financial Conduct Authority (**FCA**) that it would no longer persuade or require participating banks to submit rates for LIBOR after 2021, regulators/legislators, trade associations and financial industry groups comprising official sector entities, and private market participants across jurisdictions worked together to:

- identify ARRs for Impacted BRs;
- establish milestones for the transition from certain Impacted BRs to ARRs, including by encouraging market participants to cease entering into new contracts that use such rates as a reference rate ahead of the rate's cessation;
- publish recommended contractual provisions and conventions to allow new and existing contracts and products referencing Impacted BRs (collectively, **Impacted BR products**) to incorporate fallbacks or reference ARRs; and

  put in place legislation and/or regulation to facilitate transition to ARRs, particularly for contracts that are challenging to modify (often referred to as "tough legacy" contracts), by, for example, statutorily replacing the rate through legislation (as was done in the U.S. via the Adjustable Interest Rate (LIBOR) Act) or continuing publication of the rate on a non-representative, synthetic basis for a period of time (as was done in the U.K. through the exercise of certain powers given to the FCA under the U.K. Benchmarks Regulation).

**Potential Impact of Transition to ARRs**

Benchmark reforms, including the changes discussed above, require market participants to consider and prepare for the impact of: (i) the cessation or non-representativeness of Impacted BRs; and (ii) the continued transition to ARRs.

In particular, an Impacted BR may no longer be published or may cease to be representative of the underlying market and economics that it is intended to measure (each has already occurred for all LIBOR settings), be calculated differently, and/or become unavailable. The impacts of such events may include, but are not limited to, those described below, any of which may impact your investments or transactions, as well as any Impacted BR products.

*(1) Changes to calculation methodology*

ARRs may have compositions and characteristics that differ significantly from the Impacted BRs they may replace. In some cases, the ARRs may have limited history and may demonstrate less predictable or different performance over time than the Impacted BRs they replace. For example, while LIBOR was a forward-looking term rate, certain ARRs that replaced LIBOR (*e.g.*, the Secured Overnight Financing Rate (SOFR), which replaced USD LIBOR, and the Sterling Overnight Index Average (SONIA), which replaced GBP LIBOR) are backward-looking (*i.e.*, they are published after the period to which they relate) overnight rates and therefore do not include a "term" element. In addition, ARRs may be calculated on a compounded or weighted-average basis, may involve operationally complex calculations, and may not reflect bank credit risk and therefore may require a spread adjustment. Although certain forward-looking ARR-linked term rates are currently available, including Term SOFR and Term SONIA, there is no guarantee that a forward-looking term rate will be developed for all ARRs and the ability to use such rates may be limited.

*(2) Impact on liquidity and pricing*

The cessation of Impacted BRs and the transition to ARRs may adversely impact the value and/or performance of Impacted BR products and cause market dislocations, fragmentation, and disruptions. In addition, Impacted BR products are likely to become less liquid as the transition process develops and continues, and other unforeseen consequences may arise if such products are held beyond relevant Impacted BR cessation dates. New financial products linked to ARRs may initially be less liquid if trading volumes are lower than the trading volumes of corresponding existing Impacted BR products. Further, there is no guarantee that liquidity will develop for all ARR-linked products.

*(3) ARRs may perform differently from Impacted BRs*

There can be no assurance that ARRs (including any methodologies for adjustments) will be similar to, or produce the economic equivalent of, Impacted BRs they seek to replace, particularly as ARRs may have characteristics that differ significantly from the Impacted BRs they seek to replace (as discussed above). In addition, certain ARRs may have limited history and it is also possible that ARR-linked products may perform differently from Impacted BR products during times of economic stress or adverse or volatile market conditions and across the credit and economic cycle.

*(4) Impact on hedging and other linked products*

ARRs may vary across, or even within, categories of contracts, products, and/or services. The formulation of an ARR (*e.g.*, a backward-looking rate, a simple daily rate, a compounded rate, or a forward-looking term rate) or the process for calculating any spread adjustment may diverge by currency, financial instrument, and/or the timing of the transition. These differences may have an economic impact, including the ability to maintain effective hedges of certain contracts, products, and/or services, and therefore can create an economic mismatch.

*(5) Existing fallbacks or contract remediation*

Certain Impacted BR products may include a process to transition to using an ARR in the event of an Impacted BR cessation event. However, these terms may develop: (i) prior to an announcement regarding the permanent cessation or non-representativeness of an Impacted BR; or (ii) if following such announcement, in an environment where it was not yet certain how an ARR would operate in practice. Therefore, it may be difficult to determine the specific successor or fallback rate that applies, when it applies, and whether it will have an adverse economic impact on your Impacted BR products.

In addition, where existing Impacted BR products do not already include a process to transition to an ARR or where the transition process may benefit from adjustment, such products may need to be amended in accordance with their terms, which may require your consent or the consent of the relevant third parties (which may include BofA).

Some outstanding Impacted BR products may be particularly challenging to modify, for example, due to the requirement that all impacted parties consent to such modification. There can be no guarantee that any third party will agree to a particular ARR or any related amendments, and it is possible that consents required for amendments will not be obtained. Legislation and/or regulations in one or more countries may be introduced that may address such challenges in Impacted BR products; for example, legislation was passed in the E.U., the U.K., and the U.S. at the federal level to facilitate transition away from LIBOR. You will need to assess how any legislation or regulation impacts your Impacted BR products. In particular, if there is an overlap between legislation or regulation in different jurisdictions, you may need to conduct a conflict of laws assessment to determine which, if any, legislation, or regulation would take priority.

*(6) Potential conflict of interest*

BofA may have a right to exercise discretion when a successor rate, including an ARR and/or the applicable spread adjustment to the designated rate (including an Impacted BR), is selected or determined for a contract, product, or service, including as to the timing of such selection or determination, pricing or any other adjustment to account for the difference between the successor rate, and the designated rate it seeks to replace. The successor rate and any such adjustments BofA selects may be inconsistent with, or contrary to, your interests or positions.

*(7) Other impacts*

To the extent an Impacted BR is used as an input to, or price source for, another benchmark, cessation of such other benchmark may also have an impact on your contracts or products that reference such rate.

In addition to the potential impacts discussed above, there are a range of potential legal, financial, tax, accounting, regulatory, operational, and/or other effects which may be relevant depending on specific circumstances.

**Next Steps**

If you have Impacted BR products (or other contracts, products or services that reference a benchmark rate that may no longer be published, be calculated differently, become unavailable, and/or cease to be representative as a result of an Impacted BR cessation), we encourage you to discuss with your counterparties (including BofA), consult your legal, tax, financial, and/or other professional advisors, and review the terms of your contracts, products, or services. It is particularly important to understand any fallback or transition provisions (*e.g.*, the process of using an ARR as a fallback or transitioning to an ARR in the event of an Impacted BR cessation), how such provisions operate, whether legacy contracts need to or can be amended or are impacted by applicable legislation or regulation, and whether there is a potential economic mismatch between ARRs and the Impacted BRs they seek to replace, including between hedges and hedged exposures.

**Disclaimer**

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