Introduction

Regulation (EU) 2016/1011 of 8 June 2016 (so-called **Benchmark Regulation** or **BMR**) has been in force since 1 January 2018. It introduced a common framework at European level aimed at ensuring the accuracy and integrity of benchmark rates used as reference indexes for financial instruments and financial contracts or to measure the performance of investment funds. In particular, article 28 of the BMR requires that supervised entities that use a benchmark shall produce and maintain robust written plans setting out the actions that they would take in the event that a benchmark materially changes or ceases to be provided.

In accordance with this provision, Legislative Decree no. 207 of 7 December 2023 introduced the new Article 118-bis into Legislative Decree No. 385 of September 1, 1993 (the **Italian Banking Act**). On January 11, 2024, article 118-bis of the Italian Banking Act came into force, implementing the BMR which, for the first time in the Italian banking system, regulates contractual clauses (known as "fallback or replacement clauses") dealing with the situation where there is substantial variation to, or permanent cessation of, benchmarks (*indici di riferimento*) used to determine the interest rate.

This contingency plan only applies to products and services to Italian clients for services provided in the Italian territory by a relevant Bank of America entity (the "Bank") where this is in scope of Article 118-bis of the Italian Banking Act.

With this contingency plan, the Bank intends to comply with the regulatory requirements, in the awareness that the assessment of alternative benchmark rates for all types of products and services offered to its customers is necessary to ensure customer protection and transparency, as well as to ensure operational continuity. The Bank, in the monitoring and periodic review of the contingency plan, aims at identifying, where possible and appropriate on the basis of regulatory and market conditions, an alternative reference rate for the replacement of each benchmark that may cease or vary substantially.

Monitoring and detection of relevant benchmark events

The Bank constantly monitors the availability of the reference benchmark rates used on an ongoing basis in order to detect cases of future cessation or substantial variation in the same, consequently determining the activation of the contingency plan.

It is specified that "cessation" means permanent cessation of the calculation, determination or provision of the benchmark rate by the relevant index provider or administrator (including, without limitation, where the administrator of the benchmark rate publicly announces that it has ceased or will cease to provide the benchmark rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that benchmark rate, the administrator of the benchmark rate or its supervisor announces that the benchmark rate may no longer be used or is no longer representative and that representativeness will not be restored or the occurrence of any other event or circumstance for which the regulations in force from time to time (including, without limitation, the Benchmark Regulation) provide for the designation of one or more replacement reference rate) even if the benchmark rate is not subject to replacement by the relevant administrator or competent authority.

By "substantial variation" of a reference rate, on the other hand, we mean the so-called "significant changes" that impact the methodology, formula or other means of calculation, determination or provision of the benchmark rate applied by the relevant index provider or administrator, also in accordance with the regulations in force from time to time.

Implementation of the contingency plan

Upon becoming aware of the future cessation or substantial variation of a benchmark in use, for example following an announcement by the administrator of a benchmark rate that the same will no longer be published, it shall endeavor to carry out the activities necessary to ensure an orderly transition from the original benchmark rate applied to the existing contract to the replacement benchmark, or to the index as substantially amended.

It should be noted that in the event of a temporary unavailability of one or more benchmark rates, the Bank replaces these benchmark rates with those identified in accordance with the provisions of the relevant contract or of the recovery plan and limited to the period of time during which the original benchmark rate is not available.

Identification of the replacement benchmark rate

In the event of cessation of one or more benchmark rates applied in accordance with the agreements entered into with a customer, the Bank shall apply, as a replacement benchmark rate, that identified in the relevant contract or otherwise according to the criteria defined in the contingency plan and represented within the same plan, as well as in the table below.

In selecting possible alternative benchmark rates, the Bank takes into consideration, as a matter of priority, any recommendations provided by the competent authority, the Central Banks, any trade associations or working groups set up specifically for this purpose, or by the administrator itself; in the absence of such recommendations, the Bank identifies alternative benchmark rates that comply with the Benchmark Regulation, or whose administrator or benchmark rate itself is present in the ESMA Register as provided for by article 36 of the Benchmark Regulation, and that they are consistent in terms of nature, structure, characteristics and market diffusion of the benchmark rates in the process of cessation or the Bank may consider adopting the recognized market replacement.

As regards substantial changes, however, the Bank typically adopts the benchmark rate as substantially amended by the relevant administrator. However, in the event that the competent authority for such benchmark rate recommends or identifies a specific alternative index that can be used as a replacement for the substantially modified benchmark rate, the Bank will typically apply the benchmark rate recommended by that authority. In the absence of such recommendations the Bank may consider adopting the recognized market replacement.

Information to customers

Within 30 days from the date of the cessation or substantial change of the reference index becoming effective, the Bank shall send a specific communication to the customers who entered into contracts indexed to the benchmark rate subject to cessation or substantial change, in order to communicate the replacement benchmark rate that will be applied to the relevant contract(s), the applicable effective date, as well as the possibility of exercising the right of withdrawal and the procedures for doing so, in accordance with the provisions of the underlying agreement.

Application of the replacement benchmark rate

Once the replacement benchmark rate to be used in the underlying agreement with the customer has been identified, the Bank assesses the need to apply an adjustment factor to such benchmark rate, which may take on a positive, negative or zero value, aimed at minimizing, on the basis of reasonably applicable financial principles and rules, any transfer of value in the transition from the benchmark rate originally applied to the replacement benchmark rate by neutralizing, to the extent possible, any negative economic impacts to any of the parties to the agreement.

Monitoring and updating of the contingency plan

The Bank constantly monitors the validity of the contingency plan. In the event of regulatory changes, events related to market conditions, organizational changes or business operations, as well as the introduction of new benchmark rates linked to the products and services offered, the Bank shall update the contingency plan itself by communicating the relevant updates to customers at least once per year or at the first available opportunity.

Table of the benchmark and replacement rates for all products and services in scope of this contingency plan

Original benchmark rate	Administrator	Replacement benchmark rate	Administrator
BBSW - Bank Bill Swap Rate	Australian Securities Exchange	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Reserve Bank of Australia
BBSY – Bank Bill Swap Bid Rate	Australian Securities Exchange	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Reserve Bank of Australia
BIBOR – Bangkok Interbank Offered Rate	Bank of Thailand	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Bank of Thailand
BKBM – Bank Bill Reference Rate	New Zealand Financial Markets Association (NZFMA)	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Reserve Bank of New Zealand
BUBOR – Budapest Interbank Offered Rate	Central Bank of Hungary (MNB)	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Central Bank of Hungary (MNB)
CDI - Certificado de Depósito Interbancário	Central Bank of Brazil	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Central Bank of Brazil

CME TERM SOFR	CME Group Benchmark Administrator	SOFR or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Federal Reserve Bank of New York
CORRA - Canadian Overnight Repo Rate Average	Bank of Canada	Prime Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Bank of Canada
EIBOR – AE Interbank Dirham Offered Rate	Central Bank of UAE (CBUAE)	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Central Bank of UAE (CBUAE)
€STR – Euro short-term Rate	European Central Bank	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	European Central Bank
EURIBOR - Euro Interbank Offered Rate	European Money Markets Institute	€STR or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	European Central Bank
HIBOR – Hong Kong Dollar Interest Settlement Rate	Hong Kong Monetary Authority (HKMA)	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Hong Kong Monetary Authority (HKMA)
KLIBOR – Kuala Lumpur Interbank Offered Rate	Bank Negara Malaysia	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Bank Negara Malaysia
PRIBOR – Prague Interbank Offered Rate	Czech Financial Benchmark	Central Bank Rate or such other rate identified by reference	Czech National Bank

	Facility s.r.o. (CFBF)	to the criteria set out in the "Identification of the replacement benchmark rate"	
SARON – Swiss Average Rate Overnight	SIX	SNB Policy Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Swiss National Bank
SHIBOR – Shanghai Interbank Offered Rate	National Interbank Funding Center	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	People's Bank of China
SOFR – Secured Overnight Financing Rate	Federal Reserve Bank of New York	Bank of America, N.A. Prime Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Bank of America, N.A.
SONIA – Sterling Overight Interbank Average Rate	Bank of England	Bank of England Base Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Bank of England
SORA - Singapore Overnight Rate Average	Monetary Authority of Singapore	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Monetary Authority of Singapore
STIBOR – Stockholm Interbank Offered Rate	Swedish Financial Benchmark Facility (SFBF)	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Sveriges Riksbank
Term CORRA	CanDeal Benchmark	CORRA or such other rate identified by reference to the criteria	Bank of Canada

	Administration Services Inc.	set out in the "Identification of the replacement benchmark rate"	
Term SONIA	FTSE International Limited	Bank of England Base Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Bank of England
TIIE - Tasa de interés interbancaria de equilibrio	Bank of Mexico	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Bank of Mexico
TIBOR (JPY) – Japanese Yen Tokyo Interbank Offered Rate	Japanese Bankers Association	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Bank of Japan
TONAR – Tokyo Overnight Average Rate	Bank of Japan	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Bank of Japan
TORF – Tokyo Term Risk Free Rate	QUICK Benchmarks Inc.	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	Bank of Japan
WIBOR – Warsaw Interbank Offered Rate	GPW Benchmark S.A.	Central Bank Rate or such other rate identified by reference to the criteria set out in the "Identification of the replacement benchmark rate"	National Bank of Poland