

Market Trends 2020/21: Medium-Term Note Programs

A Practical Guidance® Practice Note by Bradley Berman, Mayer Brown LLP



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This practice note examines recent market trends regarding medium-term note programs (MTN programs), providing an overview of the market in 2020 and 2021 with a focus on general deal structure and process, and disclosure trends. Financial service companies, such as bank holding companies, continued to use MTN programs as their vehicles for issuing large, underwritten offerings of notes as well as structured notes in 2020. The year 2020 saw a significant increase in the use of the secured overnight financing rate (SOFR) as a base rate replacing U.S. dollar LIBOR. In 2021, some issuers linked their floating rate notes to new rates designed to offer alternatives to SOFR, such as Ameribor and the Bloomberg Short-Term Bank Yield Index (BSBY), both of which have a credit element. The major change still to come in 2021 will be updating U.S. rates definitions in MTN programs in response to the new 2021 ISDA Definitions, which will come into effect on October 4, 2021.

For additional information on MTN programs, see [Medium-Term Note \(MTN\) Programs](#) and [Top 10 Practice Tips: Medium-Term Notes](#).

Deal Structure and Process

MTN programs are designed to allow fast market access by frequent issuers without the burden of negotiating a suite of takedown documents for each issuance. At the launch of

an MTN program, a set of deal documents are negotiated and executed: a distribution agreement (designed for continuous offerings, as opposed to an underwriting agreement negotiated for a specific offering), the issuer's existing debt indenture, and ancillary documents, such as a calculation agency agreement and an exchange rate agency agreement.

The offering documents for an MTN program will include a base prospectus with a general description of the issuer's debt securities that may be issued under the indenture, a more detailed prospectus supplement describing the notes to be issued under the MTN program, and free writing prospectuses and/or pricing supplements, each of which will include the specific details of each offering. The prospectus supplement will usually include a description of the issuer's fixed and floating rate notes, and the various underlying rates for floating rate notes (e.g., SOFR, the constant maturity swap rate (CMS), the Euro Interbank Offered Rate (EURIBOR), the federal funds rate, and others). During 2020, issuances of USD LIBOR floating rate notes became rarer, and many issuers dropped USD LIBOR and LIBOR provisions from their MTN program documents. Issuances of SOFR floating rate notes are becoming common. For further information, see [Medium-Term Note \(MTN\) Program Takedowns](#).

Frequent issuers of structured notes may also have so-called product supplements that will describe particular products or structures. For example, an issuer may have a product supplement designed to work with its MTN program that will describe various features of structured notes linked to indices or exchange-traded funds (ETFs). Some issuers will have product supplements that just contain descriptions of a number of indices or exchange-traded funds. The use of product supplements makes it

possible to shorten the free writing prospectus or pricing supplement for a particular deal, because much of the basic information about the note is contained in the product supplement, as is the full description of the underlying index or ETF.

The issuer will usually have multiple agents execute the MTN distribution agreement. The agents may act in the role of principal (i.e., underwriter/dealer) or as an agent for the issuer for direct sales by the issuer to the investor. Under the distribution agreement, the agents are entitled to receive diligence documentation from the issuer on a regular basis—usually quarterly, coinciding with the issuer’s filing of its Form 10-K or 10-Q. The diligence documentation will consist of a comfort letter, officers’ certificate of the issuer, and counsel’s Rule 10b-5 letter confirming that the prospectus (which includes the issuer’s filings under the Securities Exchange Act of 1934 incorporated by reference therein) do not make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. For further information on registered MTN programs, see [Registered Medium-Term Note Program Establishment Flowchart](#), [Registered Medium-Term Note Program Takedown Flowchart](#), [Registered Medium-Term Note Program Update Flowchart](#), [Registered Medium-Term Note Program Establishment Checklist](#), [Registered Medium-Term Note Program Takedown Checklist](#), and [Registered Medium-Term Note Program Update Checklist](#).

Often the underwriter is an affiliated broker-dealer of the issuer. In that case, the MTN program must be rated investment grade by a rating agency, or the issuer’s debt of the same class must be so rated. Having that rating will perfect an exemption from the requirement to use a qualified independent underwriter under the rules of the Financial Industry Regulatory Authority, Inc.

Some MTN programs are set up with only one agent signed up to the distribution agreement, which may be the issuer’s affiliated broker-dealer. That broker-dealer will then, in turn, execute dealer agreements with other distributors. In that situation, when notes are issued, they are sold first to the affiliated broker-dealer and then to an unaffiliated distributor.

At the time of a note offering, the agent, acting as an underwriter, will agree on the terms of the offering with the issuer, whether through a form terms agreement or a more informal process (such as an email or other confirmation). Issuer’s counsel usually prepares the preliminary offering document, which will be either a free

writing prospectus or a preliminary pricing supplement. That document is then filed with the Securities and Exchange Commission (under Rule 433 (17 C.F.R. § 230.433) for free writing prospectuses or Rule 424(b)(2) (17 C.F.R. § 230.424) for preliminary pricing supplements), and the underwriter will then proceed to market the notes. For many structured notes issuers that operate on a repeating calendar basis, the preliminary offering documents are filed early in the month and the offerings generally price and close about three weeks later. For more information on free writing prospectuses, see [Free Writing Prospectus Checklist](#) and [Free Writing Prospectus Flowchart](#).

Disclosure Trends

In 2019 and continuing into 2020, the market has been characterized by more issuances of shorter-term notes, more issuances of fixed rate, rather than floating rate, notes, and some fixed-to-floating rate notes with SOFR for the floating rate leg. Issuers also increased their issuances of green bonds from their MTN programs, as well as, during 2020, issuances of social bonds, “pandemic bonds,” and sustainability-linked bonds. Late March and early April 2020 saw an extraordinary volume of issuances of investment grade debt by issuers that could access the markets. These issuances provided additional liquidity to withstand the economic downturn caused by the COVID-19 lockdown. In 2020 and 2021, issuers priced a number of SOFR floating rate note issuances, using the rates structures described below and published in 2019 and 2020 by the Alternative Reference Rates Committee (the ARRC). In late 2020 and early 2021, fixed income and MTN issuance by both banks and corporations continued to be at record levels. It was only in mid-2021 that the issuance levels began to slow.

New SOFR Provisions

The ARRC published four sample term sheets for SOFR floating rate notes in 2019 and 2020. These term sheets have been widely used as the basis of new SOFR provisions in MTN programs. The first three term sheets covered methods for using compounded SOFR in floating rate notes.

The three methods are lookback, observation period shift, and payment delay. The reason that any of the three provisions might be used by an issuer of a SOFR floating rate note goes to the nature of SOFR. SOFR is a backward-looking daily overnight rate, as opposed to LIBOR, which is a forward-looking term rate. Among other differences, issuers of USD LIBOR floating rate notes and noteholders know the interest rate for any LIBOR interest period, say

three months, at the beginning of the interest period. Consequently, there is certainty and advance notice as to how much interest will be paid to the holder three months hence.

Because SOFR is an overnight rate that is compounded daily during the interest period, the rate for the interest period will not be known until the interest payment date. Interest on floating rate notes accrues from and including the issue date or the previous interest payment date, to but excluding the following interest payment date or the maturity or redemption date, as applicable. For example, if an interest payment date for a SOFR floating rate note falls on a Friday, the rate announced on that Friday would be Thursday's rate, allowing the interest rate to be calculated on Friday but with no advance notice to holders and insufficient time to ensure that the paying agent can receive funds from the issuer and then pay the interest payment to holders on that day. The three model term sheets each detail how to alleviate this problem.

For a lookback period, the daily SOFR rate for each day in the interest period will be the daily SOFR rate for a certain number of U.S. government securities business days before the date of determination. For example, if the interest payment date was Friday, with interest accruing through Thursday, and a five U.S. government securities business day lookback was in effect, the last daily SOFR rate used for the determination of the compounded SOFR rate for the interest period would have occurred on the Thursday the week prior. Consequently, on the Friday interest payment date, the issuer, paying agent, and holders would have had a week's advance notice of the payment to be made on the Friday interest payment date.

For the observation period shift, the interest period is shifted back a certain number of U.S. government securities business days prior to the relevant interest payment date. For example, if the interest payment date were to be on a Friday, the relevant interest period would be from and including the Wednesday prior to the previous interest payment date to but excluding the Wednesday prior to the relevant interest payment date. With a two U.S. government securities business day shift, this allows two business days' notice of the interest payment.

The final approach, payment delay, simply delays payment for two business days after the interest payment date, except at maturity or early redemption. The interest periods run from and including an interest payment date to but excluding the following interest payment date. Consequently, if an interest period ends on a Friday, holders will be paid their interest on the following Tuesday.

For the final interest period prior to maturity or early redemption, a "rate cut-off date" or "lockout" is used, so that the daily SOFR rate in effect a certain number of U.S. government securities business days prior to the maturity or redemption date applies to but excluding the maturity or redemption date, as applicable. For example, with a three-U.S. government securities business day rate cutoff date in effect, if the maturity date is a Friday, the SOFR rate on Tuesday will apply from Tuesday through Thursday, and the holder will be paid on Friday.

The ARRC also published universal SOFR floating rate note fallback, or benchmark replacement, provisions, which put into a logical order the SOFR replacement provisions originally included in the ARRC recommendations in the context of a U.S. dollar LIBOR fallback, but tailored for a SOFR cessation.

The fourth sample term sheet, published in early 2020, shows how to use the new SOFR Index with observation period shift as a base rate. The SOFR Index is an alternative to the calculation methods in the three sample term sheets discussed above. Under the methods described above, SOFR was measured each day in the interest period, compounded, and the interest rate for the period was calculated at the end of the interest period.

The SOFR Index measures SOFR, compounded since April 2, 2018, which was the first date of publication of SOFR. For a SOFR floating rate note based on the SOFR Index, to determine the interest rate for any interest period, the issuer or the calculation agent would just compare the SOFR Index levels at the start and end dates of the interest period. The interest period can be any length. The compounding is built into the SOFR Index level. Because there is no guarantee that the SOFR Index level at the end of the interest period will be higher than the SOFR Index level at the start of the interest period, the result may be an interest rate that is zero or negative. Accordingly, care should be taken to ensure that the interest rate is floored at zero.

For SOFR offerings marketed to retail investors, the SOFR Index has been a popular choice as it is easier to understand and the disclosure does not include confusing compounding formulae.

New 2021 ISDA Definitions – Updating MTN Program Rates Disclosures

In June 2021, the new 2021 ISDA Interest Rate Derivatives Definitions and related documentation became public. The 2021 ISDA Definitions are scheduled to go into effect on

October 4, 2021. This will cause a rewrite of the U.S. dollar rates disclosures in MTN program prospectus supplements.

Current descriptions of the various U.S. dollar interest rates in MTN programs are essentially taken from the 2006 ISDA Definitions. The new U.S. dollar interest rate provisions based on the 2021 ISDA Definitions are not set out anywhere in particular; one must first turn to the 2021 ISDA Interest Rate Derivatives Floating Rate Matrix (the Matrix), also published by ISDA, to determine what provisions, particularly related to fallbacks, to include in the description of the relevant rate.

The U.S. dollar portion of the Matrix lists the following rates, together with cross-references to the main 2021 ISDA Definitions for various characteristics of each rate, including fallbacks: Ameribor (overnight, 30- and 90-day averages, and a forward-looking term rate), USD BSBY, CMT, the 11th District Cost of Funds Rate, Commercial Paper, Federal Funds (effective and OIS compounded), LIBOR, LIBOR ICE Swap Rate, Municipal Swap Index, Overnight Bank Funding Rate, Prime Rate, S&P Index High Grade, SOFR (OIS Compound and overnight), and U.S. Treasury Bills (secondary market). The constant maturity swap rate (CMS) is not included in the Matrix. The 2021 ISDA Definitions allow for the use of rates not included in the Matrix.

Illustrative Application of the Matrix

It is helpful to compare the differences in two common rates to understand how the Matrix works: The Commercial Paper rate (CP) and the Federal Funds rate (FFE) in the Matrix is helpful.

The first three columns in the Matrix are Category/Style, Underlying Benchmark, and Designated Maturity. For CP, the category is Calculated Rate, the style is Specified Formula, and the specified formula is Money Market Yield. The underlying benchmark is U.S. Dollar Commercial Paper-Nonfinancial and the Designated Maturity is Applicable.

In contrast, the category for FFE is Screen Rate and the style is Overnight Rate. The underlying benchmark is the U.S. dollar Effective Federal Funds Rate (EFFR) and the Designated Maturity is Not Applicable. What does this mean?

CP has always been calculated as the money market yield, with part of that formula being the rate published in H.15(519) (available [here](#)) for the relevant maturity (the Designated Maturity), and the other part of that formula being the actual number of days in the interest period. The Matrix simply breaks out the elements, noting that this rate is calculated, listing the money market yield formula (which

is included in the 2021 ISDA Definitions), and requiring the Designated Maturity (one, two, or three months) to do the calculation.

The FFE is a Screen Rate, overnight, with no Designated Maturity. This makes sense, as the FFE is published on H.15(519) and is also available from commercial vendors, like Bloomberg or Refinitiv. No calculations are required to determine the FFE.

The next several columns in the Matrix cover some mechanical aspects of these rates: the Fixing Time, which is the time of day to take the rate; the Fixing Day, which tells you what day to take the rate in relation to the reset date; the rate's administrator (Board of Governors of the Federal Reserve System for CP, Federal Reserve Bank of New York for FFE); and the day count fraction.

Fallback Provisions

The familiar polling fallback provisions, known generically as Reference Banks, are nowhere in the Matrix. The shortcomings and potential problems inherent in using the Reference Banks provisions are well-known, and have been replaced with a new fallback regime, which will be familiar to those conversant with the ARRC's recommended U.S. dollar LIBOR fallbacks or the SOFR fallbacks.

The Applicable Fallback Rate column is Not Applicable for each of CP and FFE. For U.S. dollar LIBOR, the fallback is SOFR; for SOFR, the fallback is the Fed Recommended Rate, or any subsequent fallback contemplated with the Permanent Cessation Fallbacks for SOFR.

Because there is no Applicable Fallback Rate for either CP or FFE, we need to sort through the:

- Temporary Non-Publication Trigger / Temporary Non-Publication Fallback
- Permanent Cessation Trigger / Permanent Cessation Fallback
- Administrator/Benchmark Event / Administrator Benchmark Fallback

As these column headings imply, the new fallbacks cover temporary and permanent cessations of the rate. A third option, essentially impracticability, is also covered.

However, the application for a temporary publication cessation is quite simple. The Temporary Non-Publication Trigger is the Standard Temporary Non-Publication Trigger. The Standard Temporary Non-Publication Trigger for a floating rate note using the Matrix means "the Applicable Benchmark [here, CP or FFE] is not published by the Administrator or an authorized distributor and is not

otherwise provided by the Administrator by either (a) the later of (I) the Reset Date and (II) the Fixing Day or (b) such other date on which the Applicable Benchmark is required . . .”

If a Standard Temporary Non-Publication Trigger occurs, then use the Temporary Non-Publication Fallback in the Matrix. For both CP and FFE, that is the previous day’s rate (i.e., the “last provided or published level of that Applicable Benchmark”). This is a massive improvement on going to polling for a temporary disruption in a rate’s publication.

What if publication of either CP or FFE permanently ceases, or as discussed below, use of the rate become impracticable? Again, instead of polling, the solution is similar to the ARRC’s USD LIBOR recommended fallbacks, or the current fallbacks for compounded SOFR. To determine whether a Permanent Cessation Trigger has occurred, check the choice in the Matrix which, unless the parties specify otherwise, is “Index Cessation Event.”

An Index Cessation Event includes two events, with an option for a third. The first two events are:

(a) a public statement or publication of information by or on behalf of the Administrator of the Applicable Benchmark announcing that it has ceased or will cease to provide the Applicable Benchmark permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator or provider, as applicable, that will continue to provide the Applicable Benchmark;

(b) a public statement or publication of information by the regulatory supervisor for the Administrator of the Applicable Benchmark, the central bank for the currency of the Applicable Benchmark, an insolvency official with jurisdiction over the Administrator for the Applicable Benchmark, a resolution authority with jurisdiction over the Administrator for the Applicable Benchmark or a court or an entity with similar insolvency or resolution authority over the Administrator for the Applicable Benchmark, which states that the Administrator of the Applicable Benchmark has ceased or will cease to provide the Applicable Benchmark permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator or provider that will continue to provide the Applicable Benchmark

These two subparagraphs are identical to the definition of Benchmark Transition Event for both USD LIBOR and SOFR. If Non-Representative is indicated in the Matrix,

such as for USD LIBOR (but not for CP and FFE), a third paragraph of the definition of Index Cessation Event is included:

(d) a public statement or publication of information by the regulatory supervisor for the Administrator of the Applicable Benchmark announcing that (I) the regulatory supervisor has determined that such Applicable Benchmark is no longer, or as of a specified future date will no longer be, representative of the underlying market and economic reality that such Applicable Benchmark is intended to measure and that representativeness will not be restored and (II) it is being made in the awareness that the statement or publication will engage certain contractual triggers for fallbacks activated by pre-cessation announcements by such supervisor (howsoever described) in contracts . . .

If an Index Cessation Event has occurred, you would move on to the designated Permanent Cessation Fallback, which, for both CP and FFE, is Generic Fallback Provisions. However, there is another way that the Generic Fallback Provisions might apply.

Instead of an Index Cessation Event, there could be what is defined as an Administrator/Benchmark Event. The Matrix designates this as applicable for all USD rates. An Administrator/Benchmark Event is defined as “the delivery of a notice by one party to the other specifying, and citing Publicly Available Information that reasonably confirms events or circumstances which have the effect that either or both of the parties or the calculation agent is not, or will not be, permitted under any applicable law or regulation to use the Applicable Benchmark to perform its or their obligations under the Transaction” Upon the occurrence of an Administrator/Benchmark Event, the parties would, for CP and FFE, proceed under the Generic Fallback Provisions.

The Generic Fallback Provisions are a set of wide-ranging options that apply when a Permanent Cessation Trigger occurs or a transaction potentially may fail due to an Administrator/Benchmark Event. Some of the Generic Fallback Provisions may not be workable for floating rate notes, and the parties to the transaction may elect to deviate from the requirements. The general thrust of the Generic Fallback Provisions is that the parties to the transaction (the issuer and the trustee, on behalf of the holders, in the case of floating rate notes) must work in good faith to go through each of the Alternative Continuation Fallbacks to get to a Continuation Amendment. A Continuation Amendment means “an amendment to the terms of the Transaction to allow the

Transaction to continue in accordance with its terms as amended in accordance with the relevant Alternative Continuation Fallback.”

There are five Alternative Continuation Fallbacks:

- Agreement between the parties
- Application of Alternative Pre-nominated Index
- Application of Alternative Post-nominated Index
- Application of Calculation Agent Nominated Replacement Index
- No fault termination

For floating rate notes, the second option is likely the most workable. In this case, and in the context of floating rate notes, the issuer would specify in the offering document for the notes and in the notes the Alternative Pre-nominated Index, which is defined as “the first of the indices, benchmarks or other price sources specified by the parties as an ‘Alternative Pre-nominated Index’ that is not subject to a Fallback Trigger.” As the definition implies, the issuer could specify more than one replacement rate.

If this Alternative Continuation Fallback were to be used, then:

The terms of the Transaction shall be adjusted so that (a) references to the Impacted Index are replaced by references to the Alternative Pre-nominated Index, (b) if the parties agree to an Adjustment Payment, the Adjustment Payment shall be made in accordance with that agreement or, if the parties do not agree to an Adjustment Payment, the Calculation Agent shall apply the Adjustment Spread to the Alternative Pre-nominated Index and (c) the Calculation Agent shall, after taking into account any Adjustment Payment or Adjustment Spread, make any other adjustments to the Transaction that are necessary to account for the effect on the Transaction of referencing the Alternative Pre-nominated Index.

As mentioned above, the CMS Rate is not included in the Matrix. Issuers have generally settled on provisions for temporary non-publication and permanent cessation of the CMS Rate, and are unlikely to change them in response to the 2021 ISDA Definitions.

Risk Factors

Issuers added risk factors relating to SOFR to their MTN programs. These risk factors also point out the differences between SOFR and USD LIBOR. Risk factors have been, and should be, updated to highlight the potential conflicts of interest between the calculation agent, which may be an

affiliate of the issuer, and the noteholders, in the event that SOFR fails and the benchmark replacement provisions come into effect. Issuers in late 2020 updated their risk factors to include the completion of Brexit and the possibility that, following the transition, regulation in the United Kingdom would begin to differ from that in the European Union. Issuers also have added to their base offering documents risk factors explaining the effect of COVID-19 on their businesses. In addition, responding to the concerns raised by U.S. and foreign regulators, many issuers also have updated risk factors in their base offering documents relating to cybersecurity and breaches, and to climate change and other environmental risks.

For more information on risk factors, see [Market Trends 2020/21: Risk Factors](#), [Top 10 Practice Tips: Risk Factors](#), and [Risk Factor Drafting for a Registration Statement](#). For a form of risk factor relating to Brexit, see [Brexit Risk Factor](#).

What about Outstanding LIBOR Floating Rate Notes That Mature after June 30, 2023?

The administrator for LIBOR and other inter-bank offered rates, ICE Benchmark Administration (IBA), confirmed on March 5, 2021, its previously announced dates for LIBOR cessation. On the same day, the U.K. Financial Conduct Authority (FCA) announced that one-week and two-month USD LIBOR will cease publication after December 31, 2021, as will all non-U.S. dollar LIBOR tenors, and that overnight, three-month, six-month, and one-year U.S. dollar LIBOR will cease publication after June 30, 2023.

What does this mean for outstanding USD LIBOR floating rate notes that have the ARRC recommended fallback provisions from USD LIBOR to SOFR? A Benchmark Transition Event, as defined in the ARRC fallbacks, has occurred. However, because most USD LIBOR floating rate notes are linked to tenors other than one-week and two-month USD LIBOR, these notes will not transition to SOFR under the ARRC fallbacks because the required Benchmark Replacement Date has not occurred. The FCA announcement also was an Index Cessation Event under Supplement No. 70 to the 2006 ISDA Definitions. Consequently, the ISDA fallback spread adjustments published by Bloomberg were fixed on March 5, 2021, which was the Spread Adjustment Fixing Date under ISDA Supplement No. 70. The ARRC has previously stated that it will use the same spread adjustments as ISDA for floating rate notes. For three-month USD LIBOR floating rate notes using the ARRC fallbacks, on the first business day after June 30, 2023, the replacement rate will be either Term SOFR, if available, or compounded SOFR, plus the spread adjustment of 0.26161.

What will happen to outstanding USD LIBOR floating rate notes with the old fallbacks based on the 2006 ISDA Definitions?

On April 7, 2021, the New York legislative solution for legacy USD LIBOR contracts became Article 18-C of the New York General Obligations Law. Article 18-C is primarily aimed at USD contracts, securities, or instruments (e.g., floating rate notes, loans, securitizations, and mortgages) with the 2006 ISDA Definitions LIBOR fallbacks, or no fallback provisions at all, and which are governed by New York law. Article 18-C has no effect on USD LIBOR floating rate notes that have the ARRC recommended fallback provisions to SOFR, nor does it have any effect on non-U.S. dollar LIBOR floating rate notes.

Under Article 18-C, a “LIBOR discontinuance event,” as defined, occurred with respect to all USD LIBOR tenors. Consequently, once Article 18-C came into law, the polling provisions in USD LIBOR floating rate notes were deemed null and void and without any force or effect. This will have no practical effect on legacy USD LIBOR floating rate notes because the polling provisions would only be looked to once U.S. dollar LIBOR ceases (December 31, 2021, for one-week and two-month U.S. dollar LIBOR, and June 30, 2023, for all other U.S. dollar LIBOR tenors) and, at that point, Article 18-C would automatically change the USD LIBOR provisions to the ARRC recommended fallback provisions to SOFR.

For USD LIBOR floating rate notes that have a discretionary replacement fallback to an industry-accepted replacement rate standard, Article 18-C confirms that the choice of SOFR to replace USD LIBOR under the terms of the floating rate note is a commercially reasonable substitute for USD LIBOR; a reasonable, comparable, or analogous term for USD LIBOR under the terms of the floating rate note; a replacement that is based on a methodology similar to LIBOR; and substantial performance by any person of any right or obligation under such floating rate note.

Market Outlook

In 2021, SOFR-linked debt instruments will continue to pick up traction in the market. It remains to be seen how the SOFR competitors, such as Ameribor, BSBY, and others fare. We are already seeing regulatory pushback against BSBY, with Securities and Exchange Commission Chair Gary Gensler, in a message to the Financial Stability Oversight Council, stating that he believes that BSBY suffers from many of the same flaws as does LIBOR because BSBY is an inter-bank lending rate based on insufficient volume. See Prepared Remarks Before the Financial Stability Oversight Board, June 11, 2021, available [here](#). As October 4, 2021, approaches, all MTN program issuers will have to update their U.S. rates disclosure in order to avoid a hedging mismatch.

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Recently, Bradley advised an issuer on establishing a registered structured warrant program, including post-effectively amending their registration statement to add a new class of warrants and drafting the issuer's first warrant indenture.

Bradley is co-author of *Considerations for Foreign Banks Financing in the United States* (2012; updated 2014, 2016), published by International Financial Law Review.

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