Regulatory Impact Statement for the Amendments to Parts 333 and 334 of the Superintendent's Regulations of 3 NYCRR

1. Statutory Authority: Financial Services Law Sections 202 and 302; Banking Law Sections 10, 14, 108.4, 108.5, 202, 235.8-b, 351.2, and 590-a.3; and Personal Property Law Sections 303, 404, and 413.

Financial Services Law ("FSL") Section 202 establishes the office of the Superintendent of Financial Services ("Superintendent") and provides the Superintendent with broad rights, powers, duties and discretion with respect to matters under the Financial Services Law, the Banking Law, and the Insurance Law. FSL Section 302 sets forth the power of the Superintendent to prescribe, withdraw or amend rules and regulations involving financial products and services, including in effectuating and interpreting the provisions of the Financial Services Law, the Banking Law ("BL"), and the Insurance Law, and in governing the procedures to be followed in the practice of the Department.

BL Section 10 sets forth a declaration of policy, including that banking institutions will be regulated in a manner to insure safe and sound conduct and maintain public confidence. BL Section 14 references, without limitation, the policy of BL Section 10 and sets forth certain powers of the Superintendent under the BL, including the power to "make, alter and amend orders, rules and regulations not inconsistent with law."

Numerous statutory provisions in the BL and the Personal Property Law govern variable interest rate loans. Pursuant to Sections 14.1, 108.4, 108.5, 202, 235.8-b, 351.2, and 590-a.3 of the BL, and Sections 303.4, 404.4, and 413.3 of the Personal Property Law, certain types of variable interest rate loans may only be made in accordance with benchmark indices approved by the Department of Financial Services ("Department").

The Department has promulgated numerous rules to regulate specific types of variable rate lending. 3 NYCRR 33 governs variable rate closed-end personal loans. 3 NYCRR 80 governs variable rate junior mortgage loans. 3 NYCRR 90 governs variable rate open-end accounts established by banking institutions. 3 NYCRR 91 governs variable rate installment agreements. 3 NYCRR 92 covers variable rate closed-end retail

installment contracts and obligations. This entire series of regulations requires use of benchmark indices to do interest rate calculations. The Department lists these approved benchmarks in Parts 333 and 334 of Title 3 of the NYCRR.

2. Legislative Objectives: By requiring the Department to approve benchmark indices that may be used to set rates for certain variable interest rate loans, the Legislature intended to protect consumers against potential abuse by ensuring that only rates that are not subject to manipulation are used. This is evident, for example, in the language of Section 590-a(3) of the Banking Law, which specifies that approved indices must be "(a) readily available, (b) independently verifiable, (c) beyond the control of the licensee, and (d) approved by the superintendent."

Parts 333 and 334 must be amended to serve this legislative objective. The London Inter-Bank Offered Rate ("LIBOR") is a major benchmark index that was commonly used by the industry and both Parts 333 and 334 list one month, three-month, six-month and one-year LIBOR as approved benchmark rates. Unfortunately, multiple civil and criminal investigations have shown that the LIBOR index was being manipulated by the banks that calculated the rate.

With the revelation of the rate manipulations, LIBOR was deemed to be an unreliable benchmark and a decision was made to phase out LIBOR entirely. One week and two-month dollar denominated LIBOR rates expired at the end of 2021. All other dollar denominated LIBOR rates are set to expire on June 30, 2023.

Accordingly, the Department promulgated a series of emergency adoptions to amend Parts 333 and 334 to make the Secured Overnight Financing Rate ("SOFR") available as an alternative benchmark for pricing variable rate loans. The Department did not abolish the use of LIBOR immediately; it only wanted to make SOFR rates available for one-month, three-month and six-month tenors.

The Department now proposes to eliminate references to LIBOR as an approved benchmark rate for new loans. As a substitute for LIBOR, the Department will include CME Term SOFR rates, as published by the

CME Group Benchmark Administration Limited. The Department proposes to include CME Term SOFR rates for one-month, three-month, six-month and twelve-month tenors For background on CME Term SOFR, see https://www.cmegroup.com/market-data/cme-group-benchmark-administration/term-sofr.html

Further, the Department proposes to eliminate an obsolete index: the average cost of funds index for FSLIC institutions. This index has not been published for approximately 30 years, and there is no need to substitute a different one.

3. Needs and benefits: The Department regulates more than 250 state-chartered banks and licensed foreign bank branches and agencies in New York, and a variety of other entities engaged in delivering financial services to the residents of New York State. Any of these institutions that offer certain variable interest rate products need to set the rate in accordance with indices approved by the Department. Historically, LIBOR was a common index widely used to set variable interest rates. With LIBOR set to expire completely by June 30, 2023, the Department needs to approve a new index that can be used to set rates. The need to approve new benchmark indices is important now as several federal regulators, some of which the Department shares oversight of its regulated institutions, announced that they consider it an unsafe and unsound practice to set rates using LIBOR after December 31, 2021. The Department wants to approve the same rates or indices that federal regulators have approved.

The Alternative Reference Rates Committee ("ARCC") is a group of private-market participants convened by the Federal Reserve Board of Governors (the "Board") and the Federal Reserve Bank of New York to help ensure a successful transition from U.S. dollar (USD) LIBOR to a more robust reference rate, its recommended alternative, SOFR. The ARRC is comprised of a diverse set of private-sector entities that have an important presence in markets affected by USD LIBOR and a wide array of official-sector entities, including banking and financial sector regulators, as ex-officio members. Federal banking regulators generally follow the recommendations of ARCC.

On July 29, 2021, ARCC formally recommended the use of the CME Group's forward-looking SOFR rates:

https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2021/ARRC_Press_Release_Term_SOFR.pdf

On May 19, 2022, the ARCC endorsed use of the CME 12-month Term Rate:

https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2022/ARRC_CME_12-Month_SOFR_Term_Rate.pdf

Accordingly, the Department proposes listing CME Term SOFR as a substitute index in Parts 333 and 334.

CME Term SOFR is a forward-looking term rate based on SOFR administered by CME Group Benchmark Administration, Ltd. These forward-looking SOFR term rates are calculated by first projecting a possible path of overnight rates that is consistent with the observable averages implied by SOFR-based derivative contracts and then creating averages over standard tenors of that projected path of overnight rates. In projecting the path of overnight rates, CME Group uses a combination of one-month and three-month SOFR futures contracts to ensure that as many data points as possible are used to calculate the term structure. The methodology is explained at: https://www.cmegroup.com/market-data/files/cme-term-sofr-reference-rates-benchmark-methodology.pdf

4. Costs: The amendments to Parts 333 and 334 do not increase the costs imposed on regulated industries or anyone else.

5. Local government mandates: The amendments do not impose any mandates on local governments.

6. Paperwork: The proposed amendments do not create any new reporting, recordkeeping or other compliance requirements for any regulated business whether it is large or small.

7. Duplication: The regulation does not duplicate, overlap or conflict with any other regulations.

8. Alternatives: The purpose of the amendment is to adjust Parts 333 and 334 to facilitate the transition away from LIBOR to a new benchmark for variable-rate loans. There is no rational alternative but to amend the regulations that already specify the benchmarks approved by the Department.

9. Federal Standards: Federal law does not govern the rates used for these variable loans in a strict sense. Existing federal law governs legacy contracts and not new contracts. Nonetheless, many companies regulated by the Department are also subject to federal regulations and supervision. Accordingly, the Department believes it is best if its regulations are harmonious with federal regulations and policy standards.

The Board, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency have jointly stated that, given the risks of using an index that will be discontinued, the agencies "believe entering into new contracts that use USD LIBOR as a reference rate after December 31, 2021, would create safety and soundness risks and will examine bank practices accordingly." See https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20201130a1.pdf. Accordingly, any institution that is jointly regulated by the Department and a federal agency that adopts the position outlined in the joint statement should already be using a new benchmark as of January 1, 2022 or risk being found to be operating in an unsafe and unsound manner.

The Consumer Finance Protection Bureau ("CFPB") has amended its Regulation Z to facilitate the transition away from LIBOR. CFPB will allow its regulated institutions to use SOFR benchmarks. Amendments to Regulation Z concerning LIBOR and SOFR will be phased in over a 2-year period. See Facilitating the LIBOR Transition (Regulation Z), 86 FR 69716 (Dec. 8, 2021) at https://www.federalregister.gov/documents/2021/12/08/2021-25825/facilitating-the-libor-transition-regulation-z. This amendment to Regulation Z required small technical corrections in 2022. See Facilitating the LIBOR Transition (Regulation Z); Correction, 87 FR 8733 (Feb. 16, 2022) at:

https://www.federalregister.gov/documents/2022/02/16/2022-03344/facilitating-the-libor-transition-regulation-z-correction

For legacy contracts that specify LIBOR as a benchmark, the federal Adjustable Interest Rate (LIBOR) Act, 12 U.S.C. Sections 5801-5807, is applicable. That federal statute is interpreted and implemented by the Board. The Board adopted 12 C.F.R. Part 253 (Regulation ZZ) to implement benchmark replacements in legacy contracts. Regulation ZZ became effective on February 27, 2023. Regulation ZZ expressly endorses the use of CME Term SOFR for most cash products and consumer loans.

10. Compliance Schedule: The proposed amendments will take effect upon publication of the Notice of Adoption in the State Register.

Statement Setting Forth the Basis for the Finding that the Amendments to Parts 333 and 334 of the Superintendent's Regulations of 3 NYCRR Will Not Have a Substantial Adverse Impact on Local Governments and Small Businesses

The purpose of the amendments is to replace and eliminate obsolete indices that regulated entities may use to make certain variable interest rate loans. A new index, CME Term Secured Overnight Financing Rate ("SOFR"), is necessary because the London Inter-Bank Offered Rate ("LIBOR") index will become obsolete in the near future. The amendments impose no reporting, recordkeeping, or other compliance requirements on public or private entities. Therefore, the amendments will not impose any adverse impacts on local government or small businesses.

Statement Setting Forth the Basis for the Finding that the Amendments to Parts 333 and 334 of the Superintendent's Regulations of 3 NYCRR Will Not Have a Substantial Adverse Impact on Rural Areas

The purpose of the amendments is to replace and eliminate obsolete indices that regulated entities may use to make certain variable interest rate loans. A new index, CME Term Secured Overnight Financing Rate ("SOFR"), is necessary because the London Inter-Bank Offered Rate ("LIBOR") index will become obsolete in the near future. Therefore, the amendments will not impose any adverse impacts on rural areas or any new or heightened reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas. The proposed amendments do not distinguish between regulated parties located in rural, suburban, or metropolitan areas of New York State, but apply universally throughout the state.

Statement Setting Forth the Basis for the Finding that the amendments to Parts 333 and 334 of the Superintendent's Regulations of 3 NYCRR Will Not Have a Substantial Adverse Impact on Jobs and Employment Opportunities

This amendment should not adversely impact jobs or employment opportunities in New York State. The purpose of the amendments is to replace and eliminate obsolete indices that regulated entities may use to make certain variable interest rate loans. A new index, CME Term Secured Overnight Financing Rate ("SOFR"), is necessary because the London Inter-Bank Offered Rate ("LIBOR") index will become obsolete in the near future.