FAQs for Business Loans Hardwired Fallback Language
November 25, 2020

The ARRC published [updated recommended fallback language for syndicated business loans] on June 30, 2020 and [updated recommended fallback language for bilateral business loans] on August 27, 2020. The frequently asked questions (FAQs) below relate to those fallback language recommendations. Please note that this document will evolve over time as new questions are raised.

Pre-cessation Trigger

1. *Will the effectiveness of the pre-cessation trigger (i.e. LIBOR non-representativeness) in ISDA's Supplement and Protocol and the ARRC's fallback language recommendations for cash products occur simultaneously?*

Yes. Although the triggers are drafted somewhat differently, both the ISDA trigger and the ARRC trigger lead to a transition away from LIBOR upon the date that LIBOR is deemed no longer representative by the U.K. Financial Conduct Authority. While the ISDA trigger drafting discusses both (1) an announcement by the FCA that LIBOR will no longer be representative as of a certain date and (2) an announcement by the FCA that LIBOR is no longer representative, LIBOR is only replaced by the fallback rate as of the date that LIBOR is actually no longer representative while the date of the announcement would only determine when the fallback spread adjustments are set. The ARRC trigger drafting solely discusses an announcement that LIBOR is no longer representative (event (2)), and LIBOR would be replaced by the fallback rate as of the date of that announcement, i.e. the same date under ISDA documentation.

2. *Given that the ARRC pre-cessation trigger only covers an announcement that LIBOR is no longer representative, does that mean the ARRC recommended spread adjustments are set at a later date?*

No. On June 30, 2020 the ARRC stated that its recommended spread adjustments will be set on the same date as ISDA's spread adjustments – which could be a prospective pre-cessation announcement by the FCA - and in fact, for non-consumer cash products, will match the numerical values as ISDA's spread adjustments. ISDA fallbacks and ARRC recommended fallbacks are aligned with respect to timing of effectiveness and the spread adjustments that would apply to fallbacks.

Spread Adjustments

3. *Which spread adjustment would be used upon transition if the tenor for an existing term rate Benchmark (e.g., LIBOR) does not match the payment period for payment of interest (either for such Benchmark or for the Benchmark Replacement (e.g., Daily Simple SOFR))?*

For loan facilities other than those facilities with multiple tenors available under the existing term rate Benchmark (e.g. LIBOR) that generally correspond to the payment period for payment of interest and that will be transitioning to a non-term Benchmark Replacement (e.g. Daily Simple SOFR), the ARRC recommended spread adjustments will be linked to the tenor of LIBOR (not the frequency of payment) and the tenor for LIBOR (or any other then-current term rate Benchmark in a future transition) would govern the selection of the "Benchmark Replacement Adjustment." There is significant variation across loan facilities on the usage of LIBOR tenors and payment periods, including whether borrowers have the ability to make tenor elections. The application of the above answer to a few common permutations is demonstrated below:

- Assume a loan facility references three-month LIBOR, but interest is payable monthly. If the facility falls back to Daily Simple SOFR with interest payable monthly, the ARRC recommended spread adjustment (or ISDA's spread adjustment) for three-month LIBOR would apply.
- Similarly, if a loan facility references one-month LIBOR and interest is paid quarterly and the loan facility would fall back to Daily Simple SOFR with quarterly interest payments, the ARRC recommended spread adjustment (or ISDA's spread adjustment) for one-month LIBOR would apply.
- If a loan facility references three-month LIBOR with interest payable monthly and six-month LIBOR with interest payable quarterly (at the option of the borrower), and the loan facility falls back to Daily Simple SOFR with interest payable monthly or quarterly (at the option of the borrower), the ARRC recommended spread adjustment (or ISDA's spread adjustment) for three-month LIBOR would apply for interest payable monthly and the ARRC recommended spread adjustment (or ISDA's spread adjustment) for six-month LIBOR would apply for interest payable quarterly.

4. *Which spread adjustment would be used upon transition if a loan facility has multiple tenors available for an existing term rate Benchmark (e.g., LIBOR) and will be transitioning to a non-term rate Benchmark Replacement (e.g., Daily Simple SOFR)?*

If a loan facility has multiple tenors available for an existing term rate Benchmark (e.g., LIBOR) that generally correspond to the payment period for payment of interest and will be transitioning to a non-term rate (e.g., Daily Simple SOFR), the tenor for the existing term rate Benchmark that is approximately equal to each payment period identified in the Benchmark Replacement Conforming Changes for payment of interest for the Benchmark Replacement would govern the selection of the "Benchmark Replacement Adjustment" for such payment period. There is significant variation across loan facilities on the usage of LIBOR tenors and payment periods, including whether borrowers have the ability to make tenor elections. The application of the above answer to a few common permutations is demonstrated below:

- Assume a loan facility provides for one-month, three-month or six-month LIBOR elections, with interest payable monthly (for the one-month LIBOR) or quarterly (for the three-month and six-month LIBOR):
  - If the loan facility falls back to Daily Simple SOFR and the applicable Benchmark Replacement Conforming Changes provide that the Borrower can pay interest monthly or quarterly at their election, then the one-month or three-month spread adjustment, respectively, would apply.
  - If the loan facility falls back to Daily Simple SOFR with interest only payable monthly (per the applicable Benchmark Replacement Conforming Changes), the ARRC recommended spread adjustment (or ISDA's spread adjustment) for one-month LIBOR would apply. Similarly, if that loan facility falls back to Daily Simple SOFR with interest only payable quarterly (per the applicable Benchmark Replacement

Conforming Changes), the ARRC recommended spread adjustment (or ISDA's spread adjustment) for three-month LIBOR would apply.