Question 1. *If the ARRC were to adopt one or more sets of bilateral business loan fallback language, which one or both of the recommended provisions (i.e., amendment approach and/or hardwired approach), in your view, is an appropriate policy? If you believe the amendment approach is more appropriate at present, what specific information (for instance, existence of term SOFR) would you need in order to get comfortable eventually adopting a hard-wired approach? Why?*

In our view, the hardwired approach is the more appropriate policy. Among the advantages of the hardwired approach (which advantages are not shared with the amendment approach), we would highlight (i) the consistency and uniformity of the chosen replacement to LIBOR, both across different credit facilities and across different products (derivatives, floating rate notes and securitized products are also expected to use hardwired fallback language), (ii) the certainty of the replacement rate ahead of the actual date of replacement, thereby lowering potential hold-up value, and (iii) the ease of operationally achieving the replacement of LIBOR as compared to potentially having to send out notices and potentially negotiate and enter into thousands of amendments over a short period of time (as is the case with the amendment approach).

Question 2. *Beyond your response to Question 1, are there product or transaction types, or methods of documenting transactions, for which either of the fallback approaches would be problematic? If so, please explain. What other approach would you suggest?*

Bilateral loans come in many different shapes and sizes. Some are discretionary and not committed; some have tenors of a year or less; some have much longer tenors; some fall back to a prime-based rate; some allow the Lender to choose a rate to succeed LIBOR based on certain criteria. All of these factors will come into play in terms of what works for a particular product. Generally, corporate borrowers will expect to see the same provisions in the bilateral market as they see in the syndicated market. With respect to some bilateral loan products, there is a concern both the amendment approach and the hardwired approach may be too lengthy and complex compared to existing documentation; these products may adopt a simpler approach to the documentation and may delay adoption of a hardwired approach until there is more certainty in the market as to the replacement rate. For some bilateral loan products, it may be preferable to use a version which allows the Lender to select a new rate giving due consideration to the prevailing market convention for determining a rate of interest for similar loans at such time as LIBOR becomes unavailable (similar to what those products provide for today). In addition, some bilateral loans are owned or guaranteed by government-sponsored entities like Fannie Mae, Freddie Mac, and the Small Business Administration (and serviced by the Lender), and the Lender must coordinate any approaches to changes in those products with those entities. Some of these loans may be sold into securitizations as well and that must be taken into account.

With respect to tax exempt debt, care must be taken to avoid triggering a reissuance analysis and to ensure that the replacement benchmark is deemed to be a qualified floating rate, as defined under 26 CFR 1.1275-5(b)(1), so as to retain the tax-exempt status of the facility. Provisions that allow for a Lender's determination of replacement benchmarks based upon "evolving" conventions for credit facilities as are found in the definitions of "Replacement Benchmark" and "Replacement Benchmark Spread" may be problematic under the cited regulation if they do not actually measure contemporaneous

variations in the cost of newly borrowed funds. In addition, fallback provisions that may ultimately result in a Borrower negative consent (and consequent negotiation and amendment if the Borrower objects to the Lender's determination) could also trigger a reissuance analysis in certain circumstances.

Question 3. *(a) Should fallback language for bilateral business loans include any of the pre-cessation triggers (triggers 3, 4 or 5)? If so, which ones?*

In our view, all three pre-cessation triggers should be included in the proposed fallback language for bilateral business loans.

(b) Please indicate whether any concerns you have about these pre-cessation triggers relate to differences between these triggers and those for standard derivatives or relate specifically to the pre-cessation triggers themselves.

While we believe it is important for loans to have the ability to transition away from LIBOR should one of the events described in the pre-cessation triggers occur, it may be difficult to negotiate for the inclusion of the pre-cessation triggers in credit facilities if the Borrower has entered into or is planning on entering into related swaps. Additionally, Borrowers may raise hedge accounting concerns with the inclusion of the pre-cessation triggers in credit agreements. Note, however, that swap parties can mutually agree to include the pre-cessation triggers in their ISDA documents and ISDA does not preclude the addition of these provisions.

(c) If pre-cessation triggers are not included, what options would be available to market participants to manage the potential risks involved in continuing to reference a Benchmark whose regulator has publicly determined that it is not representative of the underlying market or a Benchmark permanently or indefinitely based on a number of submissions that the Benchmark's administrator acknowledges to be insufficient to allow for production in a standard manner?

The options would seem to be limited given that failing to include such pre-cessation triggers would mean that the parties to the contract would be contractually bound to continue to use LIBOR to determine the interest rate. One option would be refinancing the loan with a new SOFR-based loan, but that would depend, among other things, on (i) market conditions affecting both Borrower and Lender appetite and (ii) SOFR-based transactions having gained traction in the loan market at that point.

Question 4. *(a) Is an "opt-in" trigger appropriate to include? Why or why not?*

In our view, an opt-in trigger is appropriate as it would have the effect of reducing the number of LIBOR-based loans ahead of the occurrence of one of the other triggers, thereby reducing the operational burden at the time the switch from LIBOR to SOFR is necessitated by one of the other triggers. For some of the loan products with a high volume of loans, incorporating an "opt-in" trigger may not be feasible as operationally this would require a great deal of coordination with a large number of Borrowers.

(b) Do you believe an "opt-in" trigger should be included in both the hardwired and amendment proposals or only in one (please specify which and explain).

In our view, the "opt-in" included in the hardwired proposal is preferable because it limits the option to "opt-in" only to Term SOFR, and additionally requires at least some market participation in Term SOFR loans to have already occurred. The hardwired "opt-in" trigger also requires participation of all relevant parties (i.e., the Lender with the negative consent of the Borrower) to agree that the trigger has been met prior to requiring the replacement of LIBOR.

One concern with the "opt-in" trigger in the amendment proposal is that given its subjectivity, it is more likely that credit facilities using such approach will replace LIBOR with a replacement rate early in the process (potentially before Term SOFR is developed). In addition, even among credit facilities that contain this version of an early "opt-in" trigger, it is possible that the trigger will be met at different times in different credit facilities and that different replacement rates (or different spread adjustments) will be used to replace LIBOR, thereby splintering the loan market.

Additionally, for certain bilateral loan products, it may not be feasible to coordinate even negative consent of the Borrowers given a large volume of loans.

Question 5. *Are there any other trigger events that you believe should be included for consideration? If yes, please explain.*

Not at this time.

Question 6. *If the ARRC has recommended a forward-looking term rate, should that rate be the primary fallback for bilateral business loans referencing LIBOR even though derivatives are expected to reference overnight versions of SOFR? Please explain.*

In our view, yes. A forward-looking term rate would be much closer to the current market standard of using forward-looking LIBOR term rates. In our view, Borrowers will very much be interested in a forward-looking term rate to replace LIBOR.

Question 7. *Should the Lender be able to eliminate certain interest period options if there are no equivalent SOFR terms available? If so, consider the following options: (i) the Lender may remove all interest periods for which there is not a published term rate or (ii) the Lender may remove only the interest periods for which there is not a published term rate and a term rate cannot be interpolated. Which of the options do you support? Why?*

In our view, option (ii) is most appropriate, but with the caveat that a third-party is publishing all interpolated rates. Although linear interpolation methodology is currently used in LIBOR credit agreement provisions, it would be administratively much more challenging (which could increase the risk of liability for Lenders) to calculate interpolated rates for potentially all credit agreements that convert from LIBOR (vs. only needing to interpolate interest rates in very rare circumstances currently). Note, certain products are reliant on 6 month LIBOR today, and in our view it would be helpful to have a 6 month term SOFR available as well.

Question 8. *Should "Compounded SOFR" be included as the second step in the waterfall? Why or why not? Would this preference be influenced by whether ISDA implements fallbacks referencing compounded SOFR or overnight SOFR?*

In our view, it is preferable for Compounded SOFR to be used as the second step, particularly if ISDA implements fallbacks referencing Compounded SOFR. Some products currently use six month LIBOR as a rate, and a compounded rate for such a lengthy period may be problematic.

Question 9. *If you believe that Compounded SOFR should be included, which compounding period is preferable ("in arrears" or "in advance")? Would this preference be influenced by whether ISDA implements fallbacks referencing compounded SOFR "in arrears" or "in advance"?*

In our view, a Compounded SOFR "in arrears" is the preferable option as it compounds the actual overnight SOFR rates that would have accrued during the interest period in question. However, we recognize that some Borrowers and Lenders may prefer that interest rates be locked in advance of the interest period in question (both for balance sheet management and operational reasons). One way of alleviating some of the concerns of using Compounded SOFR "in arrears" would be to require the Compounded SOFR "in arrears" calculation to be done a certain number of days (such as 2-4 Business Days) prior to the last day of the interest period in question. Lastly, while the option to have Compounded SOFR calculated "in advance" may appear attractive by providing another method for calculating a forward-looking term rate, we believe its advantages are outweighed by its shortcomings in properly reflecting any economic downturns or other market events that may occur during the interest period in question. ISDA has already announced that it will implement a fallback referencing compounded SOFR "in arrears". Nonetheless, we recognize that there may be operational challenges in working with Compounded SOFR "in arrears", and that for certain bilateral products, Compounded SOFR "in arrears" may not be optimal.

Question 10. *As noted, this consultation does not include Overnight SOFR as a final step in the waterfall. Do you believe that Overnight SOFR is an appropriate fallback reference rate for bilateral business loans or should the final step in the replacement rate waterfall be Compounded SOFR (after which the hardwired approach defaults to a streamlined amendment process)?*

Overnight SOFR may be appropriate as a third option, if neither Term SOFR nor Compounded SOFR are available. However, in our view the methodology that was earlier proposed of fixing one observation of Overnight SOFR for a loan lasting for a longer period has serious shortcomings. The use of Overnight SOFR fixed for a period of time could be misused by Borrowers in a scenario where a Borrower picks a particular date to lock in a favorable Overnight SOFR for a longer interest period. We would support the use of Overnight SOFR as a daily rate rather than a rate to be used over a longer duration term if neither Term SOFR nor Compounded SOFR are available. Overnight SOFR would be problematic in products which currently reference a six month LIBOR rate, and, given the volatility of Overnight SOFR, may not be desirable for all products in all markets.

Question 11. *Is there any other replacement rate that should be added to the hardwired approach waterfall before parties move to the streamlined amendment process? If so, what is the appropriate rate or rates and at which stage in the waterfall should they be applied? Please explain.*

Not at this time.

Question 12. *Do you believe that the ARRC should consider recommending a spread adjustment that could apply to cash products, including bilateral business loans?*

In our view, yes. A spread adjustment alleviates some of the concerns of potential value transfer when a facility switches from LIBOR to SOFR. Since the ARRC is comprised of a broad group of market participants (both banks and non-banks) and ex-officio members from the official sector, and is the body that identified SOFR as the recommended alternative to US Dollar LIBOR, we believe that the ARRC is the appropriate party to recommend a spread adjustment that could apply to business loans. We further believe that an impartial third party, which is not a party to the credit agreement in question, should calculate and publish the spread adjustment.

Question 13. *Is a spread adjustment applicable to fallbacks for derivatives under the ISDA definitions appropriate as the second priority in the hardwired approach spread waterfall even if bilateral business loans may fall back at a different time or to a different rate from derivatives? Please explain.*

In our view, the spread adjustment applicable to fallbacks for derivatives under the ISDA definitions can be appropriate, but the appropriateness of such spread adjustment should be limited to the Compounded SOFR step of the replacement rate waterfall (or Overnight SOFR, if this is added back). In order for the ISDA spread adjustment to work appropriately, the replacement rate chosen must match what is chosen by ISDA. Given this, we think it is appropriate for the ISDA spread adjustment to be second in the waterfall of potential spread adjustments, and behind the spread recommended by the Relevant Government Body (as defined in the hardwired approach).

Question 14. *Is there any other spread adjustment that should be added to the hardwired approach spread waterfall before parties move to the streamlined amendment process? If so, what is the appropriate spread and at which stage in the waterfall should it be applied?*

Not at this time.

Question 15. *For respondents that act as Lenders in the bilateral business loan market, would your institution be willing to (i) work with the Borrower to identify a new reference rate or spread adjustment, (ii) determine whether triggers have occurred, (iii) select screen rates where reference rates are to be found, (iv) interpolate LIBOR or term SOFR if there is a missing middle maturity and, (v) execute one-time or periodic technical or operational amendments to appropriately administer the replacement benchmark? Please respond to each and explain.*

(i) Yes, the Lender would negotiate the replacement rate with the Borrower; (ii) Yes, to the extent that the triggers may be objectively determined through publicly available information; (iii) Yes; (iv) Yes, but only to the extent that such interpolated term SOFR is being published by the Federal Reserve Bank of New York or another entity that assumes responsibility for publishing such rate; (v) Yes. It should be noted that some bilateral loan products allow the Lender to select a replacement rate for LIBOR if unavailable based on certain criteria without consulting the Borrower today, and it may be preferable for those types of loans (which generally have a very large volume of loans) to continue to operate in that way.

Question 16. *In any of these situations, should the Lender have the right to take the relevant action, for example to designate loan terms unilaterally within the framework of either Appendix I or Appendix II, simply by notice to the Borrower? Alternatively, should the lender have the right to take such action, subject only to the Borrower's right to withhold consent? Please explain which approach, or what alternative approach, you think would be better.*

The hardwired approach allows Lenders to select a replacement rate based on certain criteria without input from the Borrowers. If none of Term SOFR, Compounded SOFR or Overnight SOFR is available, it may be appropriate for the Lender to give notice to the Borrower subject to their right to object, as is currently contemplated by both the hardwired and amendment approach. This would certainly ease the operational burden of negotiating a large number of amendments in a short period of time. Corporate Borrowers in the syndicated market will expect their bilateral loans to be handled in a similar manner to their syndicated loans. Certain bilateral loans products already allow the Lender to pick a replacement rate if LIBOR is unavailable (without input from the Borrower), as in many cases the volume of these loan products would make even coordinating negative consent with Borrowers operationally very difficult, and these products may continue to be handled in a similar way going forward.

Question 17. *Is it necessary that any replacement rate and/or applicable spread adjustment be published on a screen by a third party? Why or why not?*

Yes. The Lender's role, with respect to determining rates, has historically been limited to referencing a rate published on a screen. If the Lender were required to calculate the rate or spread on an agreement-by-agreement basis, any such calculation would be manual and therefore prone to operational errors, particularly if required for a large portfolio of loans over an extended period of time. Our operational systems do not use this manual approach on a large scale today, and systems and personnel would need to be developed if such calculations were required. Referring to a published screen creates transparency on interest rates for Borrowers, Lenders and other investors in the loan market.

Question 18. *Given that market practices and conventions may change over time, should the Lender's limited ability to make conforming changes be available only at the point of transition or on a periodic, ongoing basis? Why or why not?*

In general, we do not believe that the traditional amendment provisions of the credit agreement should be altered by the introduction of the fallback language. If limited to technical changes only, the Lender could make amendments to the credit agreement on a periodic, ongoing basis. However, the Lender should not be given broad discretion to make any amendments over time, and any amendments that are not technical in nature should be subject to the amendment provisions in the credit agreement.

Question 19. *Are there operational concerns about having the ability to convert many loans over a very short period of time? Please explain.*

Yes, the operational concern would be exacerbated with the amendment approach where the replacement rate would need to be sent to the Borrower and the Lender would need to manage a large number of potential Borrower responses, particularly where one of the Benchmark

Discontinuance Events has occurred requiring the amendment process to be completed over a short period of time. The hardwired approach would alleviate the operational burden of having to negotiate and amend each credit agreement, to the extent that one of the Replacement Benchmark and Replacement Benchmark Spread waterfall options are being published at the time of the conversion.

Question 20. *Do you see other operational challenges that fallback language should acknowledge or of which the ARRC should be aware? For example, both approaches to fallback language involve various notices from the Lender – do these requirements and the resulting communications between parties impose undue operational burdens? Please explain.*

Operational readiness would largely be dependent upon the lead time that the Lender and Borrower would have between the time that the Replacement Benchmark and Replacement Benchmark Spread begin to be published and when a Benchmark Discontinuance Event occurs. To the extent that Term SOFR and a Replacement Benchmark Spread are published by the Relevant Governmental Body well ahead of LIBOR's demise, it would facilitate the Lender being able to set up the infrastructure that accommodates the adoption and conversion to the new benchmark. Lenders will need time to develop and incorporate systemic changes. Standardization of fallback language across loans that are currently being originated to a more predictable waterfall of the Replacement Benchmark and the Replacement Benchmark Spread would also contribute significantly to operational readiness. We already anticipate the need to send a number of notices to Borrowers at the time the replacement rate is selected; how much time a Lender has to give such notices will impact the operational burden. With respect to loan products which have a large volume of loans, trying to coordinate even negative consent with Borrowers would be a very difficult task, operationally.

Question 21. *If bilateral business loans fall back to a different rate from derivatives, how do market participants expect to handle the interplay of loans and their hedges? Would market participants expect that current swaps would be terminated and a new swaps entered into once the loan has transitioned?*

The hedging of loan interest can be a crucial component of risk management for both Borrowers and Lenders, as such it will be important for Borrowers and Lenders to have a mechanism to effectively hedge rates. A mismatch between the loan interest rates and hedge rates introduces the possibility that a level of hedge effectiveness required for hedge accounting is difficult to maintain. In our view as a hedge provider, in certain cases, we would expect that a modest mismatch could be managed (for example a 1-month or 3-month term risk free rate hedged with a compounded in arrears overnight rate would be likely to maintain effectiveness given that 1-month and 3-month forwards and realized overnight rates for the same term are generally very similar; however, larger tenor mismatches would introduce a greater, and therefore unappealing, interest rate risk duration sensitivity). For some Borrowers, our anecdotal expectation is that any mismatch at all between the loan interest rate and the hedge rates could cause them to cease hedging altogether, for two reasons; first, this population may have a very low appetite to incur any hedge-related earnings volatility, and even remote risks of stub period duration risk would impact their hedging decisions. Second, we understand that some Borrowers use a "critical terms match" version of hedge accounting that allows for zero ineffectiveness to be assumed if all hedge parameters align exactly. We believe this population has not had the need to set up the operational capability to deal with hedge relationships that have any rate mismatches that would disqualify the use of the "critical terms match" method. For other Lenders and Borrowers, the expectation may be that well aligned fallback triggers and fallback rates across

the industry would allow for transition of loans and hedges to new risk-free benchmarks contemporaneously – as such it is not expected that swap hedges would be terminated to enter into new swaps after the loan has transitioned. If the mismatch in tenor between the loan rate and swap hedge rate is large enough to create an ineffectiveness concern, you could see some Borrowers and Lenders faced with the decision to move accounting hedges to economic hedges, resulting in higher earnings volatility. As such, it is crucial for Borrowers and Lenders to be aware of potential mismatches in advance of a transition, in particular to allow for time to review potential hedge strategies or mismatches with external auditors.

Question 22. *Would market participants that execute interest rate hedges prefer to fall back to the same rate and spread that becomes operative under the ISDA Definitions even if a term SOFR is available? If so, please provide comments on the proposal for hedged loans set forth in Appendix VI, including a discussion of any operational concerns. Please provide comments on any other approaches you think could be useful in addressing fallbacks in loans and related hedges.*

In our view, Borrowers in general will prefer a term rate, because it is similar to what is available in the market today and provides known cash flows in advance of the required payment. Setting a different interest rate for loans which are hedged poses significant and new operational challenges for both Borrowers and Lenders, who must keep track of which loans are hedged and charge different interest rates for hedged loans. More importantly, many Lenders hedge pools of loans rather than individual loans. Therefore having homogeneity across the standards for all loans is preferable to having some loans reference fallbacks aligned to term SOFR and others aligned to the ISDA Definitions. Lastly, the solution presented in Appendix VI would not solve any issue a Borrower may have if the interest rate does not match the derivative rate for situations where the Borrower hedges its syndicated loans, or hedges its bilateral loan with a different Lender.

Question 23. *When a loan is only partially hedged, either by a swap that is not coterminous with the loan's maturity or a swap the notional amount of which is less than the loan amount (or the portion of the loan accruing interest based on LIBOR), should a trigger event result in the entire loan balance converting to the fallback benchmark? Would it be operationally practical to align only the hedged portion's terms with the terms of the swap? What other concerns would market participants anticipate in operationalizing dynamic tranching of a partially hedged loan?*

Many hedged loans today are in fact only partially hedged or hedged as a pool of eligible loans. In our view, it would be less confusing to market participants as well as operationally easier to have the entire loan balance convert to a fallback benchmark on a trigger date even in the event that loan is only partially hedged. Having to potentially re-size tranches later if the hedge changes also raises operational challenges as today our loan systems are not linked to hedges.

Question 24. *Are there any provisions in the fallback language proposals that would significantly impede bilateral business loan originations? If so, please provide a specific and detailed explanation.*

In general, Borrowers will prefer fallback language that provides more certainty and consistency in (i) the triggers that signal conversion from LIBOR to a new reference rate, (ii) what the Replacement

Benchmark will be and (iii) what the Replacement Benchmark Spread will be for loans. As such, in our view the hardwired approach will promote an orderly transition from LIBOR to a new reference rate and therefore avoid disruption in the loan market. Education and awareness of both Borrowers and Lenders as well as the standardization of fallback language in the loan markets will also be key considerations as fallback language is being incorporated into bilateral loan originations.

Question 25. *Please provide any additional feedback on any aspect of the proposals.*

For the bilateral market there is a great diversity of products and clients and the way LIBOR is currently referenced in those products. With respect to some products where there are a high volume of loans, it will be critical, operationally, for the loans to move to a new reference rate at the same time. Unlike the syndicated market, certain bilateral loan products may be owned or guaranteed by government sponsored entities such as Fannie Mae, Freddie Mac and the Small Business Administration (and serviced by the Lender), and any changes to interest rates much be coordinated with those entities. Finally, lenders of tax-exempt facilities will require regulatory guidance addressing reissuance concerns.