Date: November 26, 2018

Submitted Electronically to: arrc@ny.frb.org

Alternate Reference Rates Committee
Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045

Re: Consultation Response -- Syndicated Business Loans

Below please find responses provided by [REDACTED] regarding the Alternate Reference Rate Committee's ("**ARRC**") Consultation Regarding More Robust Fallback Contract Language for New Originations of Libor Syndicated Business Loans, published on September 24, 2018 (the "**ARRC Consultation**"). Capitalized terms used and not defined herein shall have the meanings set forth in the ARRC Consultation.

Question #1

If the ARRC were to adopt one or more sets of 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?

From our perspective, the amendment approach is preferable at this point. Once publication of an acceptable forward-looking term SOFR rate and a spread adjustment begins, then the hardwired approach will be preferable. We believe we have time before LIBOR ceases for those key data points to become available on a screen for us to use. However, we recommend that the ARRC endorse both the amendment approach and the hardwired approach, as the loan market seems split on which one is currently the preferred approach. We also think that it is beneficial to have the format for the hardwired approach available to the market so that as soon as an appropriate forward-looking term SOFR rate and spread adjustment are published, the necessary language will be available for use.

Question #2

(a) Should fallback language for business loans include any of the pre-cessation triggers: (triggers 3 (no LIBOR for 5 days and not temporary), 4 (insufficient submission policy invoked) or 5 (LIBOR no longer representative or may no longer be used))? If so, which ones?

All three of these triggers should be included. We understand that these triggers would differ from ISDA's current triggers and may result in different benchmark replacement dates in a loan that incorporates interest rate hedge arrangements. However, we believe that it is possible for the triggers for a loan that includes an imbedded interest rate hedge to be synchronized in the related derivative transaction and loan agreement documentation so that the triggers would match. The inclusion of matching triggers could be negotiated on a deal-by-deal basis.

(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.

See answer to (a) above.

(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?

This is the exact reason why we feel that it is important to include pre-cessation triggers. However, we also feel that there should be a fallback mechanism vetted and accepted by the loan market that would be used in the event that a reference benchmark is unavailable, regardless whether pre-cessation triggers are included in transaction documentation.

Question #3

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

Yes, it would be appropriate to include an "opt-in" trigger. Increased flexibility is desirable and may help alleviate issues associated with potentially high volumes of amendments. "Opt-in" triggers should be subject to Required Lender vote to ensure that a majority of lenders are in agreement. This affirmative Required Lender vote should apply to both the amendment and the hardwire approaches.

(b) If you do believe an "opt-in" trigger should be included, do you prefer the approach in the hardwired proposal or the amendment proposal? Please explain

We prefer the amendment approach opt-in trigger. The "two deals" standard used in the hardwired approach seems like an arbitrary number and may not be representative of the broader market.

Question #4

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

None.

Question #5

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

Yes. A forward-looking term SOFR rate that is publically available to borrowers and lenders is the closest replacement for LIBOR (as it will be a rate known at the time the loan is made and it will have a term relatively consistent with current LIBOR tenors) and thus easiest for the loan market to understand and adopt from both the lender and borrower perspectives. While in theory it may be possible for the loan market to evolve in a way that would allow market participants to use a daily compounded SOFR rate at some point in the future, such a change would require significant systems and accounting changes that we feel would be difficult for the market to absorb on top of the other changes related to the cessation of Libor.

The fact that the derivatives market is using overnight versions of SOFR as its replacement Benchmark is unfortunate, but the derivatives market (i) will need to create new hedging products to hedge forward looking term SOFR rate loans or (ii) the embedded hedge transaction could, theoretically, be conformed to the underlying loan agreement rate structure (i.e. forward-looking term SOFR), on a deal by deal basis. It also is important to note that these hedges must continue to qualify for favorable accounting treatment.

Question #6

Should the administrative agent (by itself or with some other party) be able to eliminate certain interest period options if there are no equivalent SOFR terms available? If so, consider the following options: (i) the

administrative agent (and/or some other party) may remove all interest periods for which there is not a published term rate or (ii) the administrative agent (and/or some other party) 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?

As administrative agent, we would prefer not to calculate an interpolated rate and would prefer to use whatever screen rate is available. This approach provides certainty to the borrower and the lenders and avoids potential disputes over interpolation calculation mechanics. If there is no screen rate available for an interest period, then that interest period should not be available to the borrower.

Question #7

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?

We are comfortable including compounded SOFR as the second step in the waterfall. However, we want to emphasize that we feel it is very important to have a published forward-looking term SOFR rate so that it would not be necessary to use compounded SOFR, except in extraordinary circumstances.

Question #8

If you believe that Compounded SOFR should be included, would a Compounded SOFR in advance or Compounded SOFR in arrears be preferable for syndicated loans? Please explain.

As mentioned above, it is our hope that we will never need to use this option. With that being said, compounded in advance has the advantage that the rate is known by the lender and borrower at the beginning of the interest period, as is the case with LIBOR today. However, compounded in arrears is the fairest to both parties as it reflects the actual rates that were in effect during the interest period. Therefore, compounded in arrears would be our preferred option.

Question #9

Is Overnight SOFR an appropriate fallback reference rate for syndicated 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)? Would this preference be influenced by whether ISDA implements fallbacks referencing compounded SOFR or overnight SOFR? Please explain.

We do not believe that Overnight SOFR an appropriate fallback for syndicated loans. Using day one's rate for the entire interest period may be unfair to the lender or the borrower, depending on what happens to rates over the life of the interest period. This problem is exacerbated for longer interest periods (such as 6 or 12 months). We also note that that SOFR seems to increase on certain days of the month/quarter and setting a longer term rate when SOFR is artificially high due to normal market fluctuations (as opposed to actual economic factors) would not be appropriate.

Question #10

Is it acceptable to fix one observation of Overnight SOFR as the reference rate for a loan lasting three months (or longer)? Would lenders refuse to offer longer-duration loans if they were priced over one Overnight SOFR observation? Please explain.

As discussed above, we do not think that Overnight SOFR is an acceptable reference rate for syndicated loans. Therefore we think that it is highly likely that banks will only offer overnight loans if Overnight SOFR is the only option.

Question #11

Is there any another 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?

We do not think that there is another replacement rate that should be added to the hardwired approach waterfall. If Compounded SOFR is not available, the parties should move to the streamlined amendment process.

Question #12

Do you believe that the ARRC should consider recommending a spread adjustment that could apply to cash products, including syndicated business loans?

Yes. Development of a robust ARRC recommended and published credit spread adjustment is very important to the loan markets. It is our view that the published spread adjustment for the first 5 years after conversion should be based upon SOFR futures trading on the CME or other futures market, and how these transactions compare to the forward LIBOR curve. For longer-term purposes (6+ year terms) it may make more sense to look beyond the CME futures markets and base the spread on the swap market generally and the basis between SOFR/LIBOR and SOFR/Fed Funds.

Question #13

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

Our hope and expectation is that the ARRC will publish a spread adjustment taking into account a forward-looking term SOFR rate structure. If that option is not available, it makes sense that the second priority option be the ISDA spread adjustment if syndicated business loans fall back to the same rate as derivatives (i.e. overnight versions of SOFR) and if the ISDA spread adjustment is published by a third party vendor. However, it is important to note that the appropriateness of spread adjustments is dependent on the underlying rate. We do have some concerns that without a published credit spread adjustment for the forward- looking term SOFR rate, if the forward-looking term SOFR rate does not track the ISDA selected fallback rate, the ISDA spread methodology might not result in an adequate spread adjustment.

Question #14

Is there any another 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?

No.

Question #15

(a) Under the amendment approach proposal, if parties are selecting a replacement rate through the amendment process, should the objection of the Required Lenders be by class (if applicable) (see clause (b) of the section titled "Effect of Benchmark Discontinuance Event" in Appendix I)? Why or why not?

Class voting should be determined on a deal by deal basis. In many deals, there is only one class, and in multi-class transactions the relative negotiating power of the different classes is not standardized so we do not think it is appropriate to impose a standard voting mechanic on these transaction structures.

(b) Under the amendment approach proposal, if parties choose to select a replacement rate through the "opt-in" amendment process, should the affirmative consent of the Required Lenders be by class (if applicable) (see clause (b) of the section titled "Effect of Benchmark Discontinuance Event" in Appendix I)? Is affirmative consent appropriate or should negative consent be considered instead?

Please explain.

Opt-in should require an affirmative consent vote by the Required Lenders. Whether consent should be required from the Required Lenders of each class should be negotiated on a deal-by-deal basis consistent with our answer to (a) above. We believe that the decision to "opt in" is significant enough to require an affirmative vote rather than a negative consent because, by definition, it is an optional decision by the parties to the transaction.

Question #16

(a) Under the hardwired approach proposal, if parties must fallback to selecting a replacement rate through the amendment process because none of the options in the replacement rate waterfall are available, is the objection of the Required Lenders by a class appropriate (if applicable) (see clause (d) of the section titled "Effect of Benchmark Discontinuance Event" in Appendix II)? Why or why not?

As discussed above we believe that determinations on class voting should be made on a deal-by-deal basis.

(b) The hardwired approach proposal provides two bracketed options for a successful declaration of the "opt-in" amendment process - Required Lenders (typically a majority) vs. supermajority (2/3) of lenders (see clause (B) of the definition of "Benchmark Transition Determination" in Appendix II). What should be the standard affirmative lender voting threshold for consenting to the "opt-in"? Please explain.

The standard voting threshold for "opt in" should be Required Lenders because this is an optional provision and not tied to the actual cessation of publication of the benchmark rate.

Question #17

For respondents that act as administrative agents in the syndicated 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 term SOFR if there is a missing middle maturity and, (v) execute one-time or periodic technical or operational amendments to allow the administrative agent to appropriately administer the replacement benchmark? Please respond to each and explain.

When we act as administrative agent, we would be willing to perform all of the activities set out in the question other than interpolation. We believe that borrowers should only be offered interest periods that coincide with published term SOFR periods to minimize the risk of disputes over whether interpolation methodologies are appropriate. In addition, it should be clear in the documentation that the administrative agent will not have any liability to the other transaction participants with respect to these actions other than liabilities that arise as a direct result of the administrative agent's gross negligence or willful misconduct.

Question #18

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. It is extremely important from an operational and transparency perspective to have a rate and spread adjustment published on a screen by a third party. Publication of the replacement benchmark rate and spread adjustment will significantly reduce the risk of disputes among the parties over the appropriateness of the replacement rate or spread methodology.

Question #19

Given that market practices and conventions may change over time, should the administrative agent'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?

The Agent's limited ability to make conforming changes should be available on an ongoing basis, however, this right should be limited in scope to only those changes that are necessary in the administrative agent's reasonable business judgment and from an administrative perspective to give effect to the replacement reference rate such as changes to the determination time of the replacement rate or changes to the publisher of the replacement rate.

Question #20

How important is it for the fallback rate to be available prior to making a borrowing/advancing funds? For instance, if the rate was a compounded three-month rate calculated at the end of the interest period, would that be problematic? Please explain.

We believe it is very important to borrowers for the rate to be available upfront for their cash flow management purposes. Additionally, if we do not know the actual rate until the end of the period it is going to make managing invoices and receivable/revenue calculations for the lender significantly more challenging.

Question #21

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

Yes. Incorporating a new interest rate and potential spread methodology will require significant resources to identify the affected populations and update the relevant systems to reflect the new benchmark and spread. This is why we believe that the "opt in" option is an important option for the loan market. With the "opt in" option we can try to coordinate an orderly conversion over time as soon as an acceptable term SOFR rate and spread adjustment become publically available.

Question #22

Do you see other operational challenges that fallback language should acknowledge or of which the ARRC should be aware? Please explain.

The potential mismatch between the loan market's use of a forward-looking term SOFR rate and the derivative market's use of overnight SOFR may make hedging of loans difficult. We have serious concerns regarding ISDA's proposals in the IBOR Consultation because they do not include a fallback structure incorporating a true forward-looking term SOFR rate. This lack of a forward-looking term SOFR rate in ISDA's proposed fallback methodologies creates two main concerns for the loan market participants:

> (1) the proposed fallback methodologies that are being developed by the loan markets refer to the final ISDA IBOR fallback methodology as a potential secondary (or tertiary) fallback methodology to the extent that a replacement forward-looking term SOFR rate is not available; and
>
> (2) since loan market participants have used derivatives to hedge interest rate exposure in loan transactions, the difference in fallback methodologies between derivatives and the cash products may create situations where legacy transactions are no longer effectively hedged and, in addition, make it difficult for borrowers to effectively hedge interest rate exposures for new loans indexed to a forward looking term SOFR Rate.

Question #23

What modifications to the syndicated loan consultative language may be helpful to market participants as they consider more robust fallback language in a bilateral or single-bank business loan context, if any? Please explain. Specifically, what modifications to the language may be appropriate in instances in which the bilateral loan is fully or partially hedged? Please explain.

Bilateral business loans are a more flexible product and the loan documents are relatively easier to amend compared to syndicated loans. In addition, bilateral loan documents vary greatly among different loan products, borrower profiles and characteristics of the underlying collateral package (if a secured loan) and call for a more customized approach when selecting a fallback rate and making other related changes. There is also a wider range of borrowers for bilateral loans and some borrowers may not be participants in the syndicated loan market at all. Those borrowers will have stronger desire to have the flexibility to select a fallback rate that suits their specific financial and operational situations.

The flexibility to amend the loan documents is especially critical for a bilateral loan that is wholly or partially hedged. For these partially/fully hedged bilateral loans, instead of being bound by a hardwired approach which will most likely result in increased basis risk (due to the mismatch between the ISDA fallback methodology and loan fallback methodology), the amendment approach would be much more appropriate for hedged bilateral loans. Ultimately, bilateral loans will be able to match the solutions developed and adopted by the wider syndicated market, however, and therefore we feel that the prudent approach would be to maintain flexibility in the bilateral documentation through adoption of the amendment approach at least until there are established alternative benchmark rates and spread methodologies in the syndicated market.

Question #24

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

None other than the difficulty in hedging the interest rates of loans due to the mismatch of replacement benchmark rates between the loan market and the derivatives market discussed above.

Question #25

Please provide any additional feedback on any aspect of the proposals.

We have no additional feedback on the proposals.