November 26, 2018

By Electronic Mail to (arrc@ny.frb.org)

Re: Syndicated Business Loans Consultation

Golub Capital commends the Alternative Reference Rate Committee for publishing the Consultation Regarding More Robust Fallback Contract Language for New Originations of LIBOR Syndicated Business Loans dated September 24, 2018 (the "Consultation"). Golub Capital agrees that it is in the best interest of the leveraged loan market to ensure minimal disruption in the event of an end to LIBOR.

Golub Capital is pleased to submit this response for ARRC's consideration. Our views on a number of the questions set forth in the Consultation are discussed below.

Overview and Guiding Principles

Golub Capital endorses an orderly transition to alternative rate-based loan contracts. The transition mechanics and the replacement reference rate should minimize (or eliminate, if possible) the basis risk for buyers of syndicated loans. Value should not be transferred between borrowers and lenders. The loan market should continue to have standard reference rates for all loans. The implementation of the fallback rate should lead to predictable outcomes. We believe that this can be done. The market will benefit from implementing robust contract language sooner versus later. The syndicated loan market has proven that it is capable of adapting iteratively from a good solution to a more perfect solution.

Responses

Response to Consultation Question 1.

It is our view that the implementation of a hardwired fallback is the more appropriate policy. As set forth below, the implementation of a hardwired approach is consistent with the ARRC's guiding principles.

First, the inclusion of hardwired fallback language provides upfront clarity to transaction parties. Predictability will allow market participants to implement transition systems and processes that take into account the menu of options. This will make transition operationally feasible. All market participants can begin from the same place, and compete on spread and terms as they do today. Moreover, transaction parties will remain free to negotiate amendments that conform to market standards and any idiosyncratic, transaction-specific needs.

150 South Wacker Drive, Chicago, IL 60606 | Main: 312.205.5050 | Fax: 312.201.9167 | golubcapital.com

Second, we believe that LIBOR cessation should not create winners and losers. At the time the market implements a new reference rate the results should be the same; it should not matter whether the market is lender friendly or borrower friendly. The base rate should not be a bargaining chip. The use of a hardwired approach minimizes the possibility for unintended point in time value transfer.

Third, the implementation of a new reference rate in *existing* loans should not derail the creation of *new* syndicated loans.[1] It does not seem reasonable to expect the market to process amendments on 10,000 loans in an orderly and efficient manner.

We acknowledge that the amendment approach correctly identifies that there is work to do. For this reason, we support a robust action plan so that the hardwired approach is actionable. An actionable hardwired fallback requires the creation of terms and mechanics that do not exist today. We do not believe that this challenge is insurmountable.

We support the paced transition plan and the timeline published by ARRC on October 30, 2018 for the creation of term SOFR.[2] To the extent possible, this timeline should be accelerated to permit the longest possible co-existence of LIBOR and SOFR. The co-existence of these rates will allow market-participants to understand the relationship between SOFR and LIBOR, and dissect other operational nuances that are unknown today.

Though recent capital markets issuances have revealed the viability of floating rate debt that reference overnight rates,[3] we do not believe that this is operationally or financially sustainable for the syndicated loan market. In periods of stress, syndicated loan borrowers could have significant intra-period increases in pricing. It is not clear that this lower level of predictability benefits anyone. In addition, and as set forth in our response to Consultation Question 12, ARRC should add to the recommendation of a spread adjustment.

The hardwired approach also seems most likely to result in proximate transition for a large portion of the loan market. Assuming the inclusion of robust pre-cessation triggers (see our response to Consultation Question 2), the occurrence of observable events would trigger automatic transition. This would benefit the syndicated loan market directly (in the form of efficiency and certainty) and indirectly. The transition of a large portion of the loan market without the complexity of amendment negotiations would minimize basis risk between pools of syndicated loans and collateralized loan obligations, which will presumably require a hardwired approach style rigidity.

---

[1] Including refinancings of then-existing syndicated loans.

[2] *See https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Progress-Timeline-Oct-30.pdf.*

[3] *See http://www.fanniemae.com/portal/media/financial-news/2018/fannie-mae-pioneers-sofr-securities-6736.html* and https://www.worldbank.org/en/news/press-release/2018/08/14/world-bank-launches-markets-first-ssa-secured-overnight-financing-rate-sofr-bond

150 South Wacker Drive, Chicago, IL 60606 | Main: 312.205.5050 | Fax: 312.201.9167 | golubcapital.com

Response to Consultation Question 2(a).

Pre-cessation triggers are essential to facilitating a "soft landing".

Fallback language for syndicated loans should include each of the three proposed pre-cessation triggers contained in the Consultation (the "Triggers").[4] We would propose that ARRC consider modifications to the proposed Triggers. It may also be appropriate to include additional triggers.[5]

The Triggers foster timely and orderly transition. It would serve the interest of both borrowers and lenders to move away from LIBOR as its sustainability decreases. However, we ask that ARRC consider whether the Triggers do most effectively encourage orderly transition as drafted. A critical question for consideration is whether the proposed construct actually encourages orderly transition to the Replacement Benchmark. We note that although the definition of Benchmark Discontinuance Event generally ties to public statements about potential cessation in addition to actual cessation, the "later" of construct in the definitions of Benchmark Reset Date and Benchmark Replacement Date may require market participants to implement the Replacement Benchmark only following actual cessation.

A second critical question is whether ARRC or another Relevant Governmental Body should publish notice of the occurrence of a Benchmark Discontinuance Event. As set forth in further detail in our response to Consultation Question 4, it may be of great benefit for ARRC to determine publicly that SOFR is available for implementation.

Response to Consultation Question 3.

The inclusion of an objective opt-in trigger in the hardwired approach is appropriate. The pre-cessation opt-in trigger contained in the hardwired approach is preferable for the market.

The inclusion of an objective opt-in trigger takes advantage of the efficiency of the syndicated loan market. Market participants can decide that SOFR (or another replacement reference rate) is at such time the more appropriate rate. The objectivity of the opt-in contained in the hardwired approach is also constructive. The objectivity (i.e., specified number of loans) removes the potential arbitrage that could result from information asymmetry among parties. We do believe that certain elements of the amendment approach opt-in have value. First, we believe that the amendment opt-in approach correctly omits the need for loans to be publicly

---

[4] See Consultation, page 22, "Benchmark Discontinuance Event", numbers 3-5.

[5] See our response to Consultation Question 4.

available. As set forth in our response to Consultation Question 4, we believe there are other objective sources available to confirm transition. In addition, we believe that the reference in the amendment opt-in approach to an alternative rate (rather than Term SOFR) is directionally correct. Because the opt-in approach contains a waterfall for selecting the alternative rate we believe that a reference to SOFR could be sufficient.[6] Second, we believe that the ability to opt-in based on notice from the Required Lenders is a constructive feature of that proposal.[7]

Response to Consultation Question 4.

We believe that the list of opt-in triggers should be expanded. The expanded opt-in list would include two additional triggers for the Required Lenders. In addition, we believe that ARRC should consider including an additional mandatory pre-cessation trigger. This opt-in trigger would be reference to a date where ARRC (or some other Relevant Governmental Authority) determined that SOFR were ready for implementation.

The first additional opt-in trigger is similar to the opt-in trigger included in the amendment approach. We believe that the Benchmark Transition Date should include a prong for the Required Lenders to notify the Administrative Agent and the Borrower and certify that in the preceding three month period at least ten loans have either (i) had a Benchmark Transition Date or (ii) implemented SOFR as the primary benchmark rate.[8] The inclusion of this opt-in trigger would allow the market to be the catalyst of and for change rather than governmental authorities. It would be reasonable to assume that even if such loans were not publicly available that rating agencies, covenant review service providers and other objective third party sources would provide a way for other transaction parties to confirm the use of an alternative rate.

The second additional opt-in trigger would improvise from the current LIBOR disruption mechanics in loan documents. The Required Lenders should be permitted to determine that a Benchmark Transition Date shall have occurred if the Reference Rate is no longer representative of the cost of funding such loan. We would propose that in this scenario a Benchmark Transition Date could only occur if SOFR (or another identified replacement rate) were in effect. The opt-in triggers are not and should not be an opportunity for lenders to force non-market reference rates on borrowers.

---

[6] As distinguished from the amendment approach which refers to loans having adopted an alternative rate, this SOFR alternative would prevent a situation where the opt-in lead to a streamlined amendment process.
[7] We also believe that giving the Required Lenders this power may help minimize basis risk.
[8] We believe that this distinction is appropriate for efficiency of transition. Were the lenders required to wait until SOFR were actually implemented the documents could be drafted in such a way as to require waiting until such loans Benchmark Reset Date. We do not believe that this would be consistent with the spirit of the transition plan.

The additional pre-cessation trigger would be a date certain on which ARRC (or some other Relevant Governmental Authority) determines that SOFR and related spread adjustment is available for implementation. We believe that this approach has numerous benefits. These benefits include (i) putting ARRC (rather than agencies responsible for LIBOR) in control of the transition, (ii) the elimination of market cycle-related value transfer and (iii) increased certainty. We believe that if this pre-cessation trigger were included ARRC could guide the expectations of market participants.[9] It is Golub Capital's view that the utilization of this opt-in trigger would be the most beneficial for all participants in the syndicated loan market.

Response to Consultation Question 6*.*

We believe that conforming changes should require the consent of super- majority of each class of lenders.

Golub Capital supports a streamlined amendment process[10]. We understand that loan documents may need to be amended to fully implement SOFR-based lending. However, we believe it is possible that conforming changes (including the removal of interest periods) could have impacts on one or more lenders that the Administrative Agent is not itself in the best position to measure. This would be especially true where changes to the frequency of interest payments were at issue.

Response to Consultation Question 12*.*

We believe that ARRC should recommend a spread adjustment applicable for syndicated loans. Syndicated loan investors (direct and indirect) have invested in syndicated loans with the expectation of a total return. The absence of a dominant (or singular) spread adjustment could lead to a significant number of disputes between borrowers, lenders, agents and other market participants. Moreover, the continued functioning of the syndicated loan market should not depend on the negotiation of spread adjustments (and the related inputs and elements) for every existing and new transaction. ARRC is currently best situated to serve as the clearinghouse for this critical piece of the transition plan.

---

[9] It is not clear that FCA or other agencies may be similarly inclined to guide the US leveraged loan market.

[10] And perhaps this process is required to make the hard-wired approach as effective as possible. It may be reasonable to structure the lenders' rights as a "negative consent".

Golub Capital appreciates the opportunity to comment on the Consultation. We would be pleased to discuss any of these comments in further detail and to provide any further comment or assistance that would be helpful. If you have any questions please contact Daniel Colaizzi at dcolaizzi@golubcapital.com. Thank you for your consideration.

David B. Golub
President

Robert G. Tuchscherer
Managing Director, Co-Head of Underwriting