November 21, 2018

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?

> **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 negotiate and enter into thousands of amendments over a short period of time (as is the case with the amendment approach).**

Question 2. (a) Should fallback language for 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 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 3. (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.**

(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.

> **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 administrative agent, the borrower and affirmative consent of required lenders) 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.**

Question 4. Are there any other trigger events that you believe should be included for consideration? If yes, please explain.

> **Not at this time.**

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.

> **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.**

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?

> **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 administrative agents) 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).

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?

In our view, it is preferable for Compounded SOFR to be used as the second step, particularly if ISDA implements fallbacks referencing Compounded SOFR.

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.

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.

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.

In our view, Overnight SOFR is appropriate as a third option. Based on how the fallback rate waterfall is drafted, the Overnight SOFR would not be the replacement rate for LIBOR unless and until (i) a trigger event with respect to LIBOR was met and (ii) forward-looking term SOFR or Compounded SOFR has not been developed. In such a scenario, Overnight SOFR appears to be the most appropriate fallback remaining.

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.

For the reasons outlined in our response to Question 8, in our view the methodology of fixing one observation of Overnight SOFR for a loan lasting for a longer period has serious shortcomings. In addition, the use of Overnight SOFR as a term rate could be misused, such as in a scenario where a Borrower picks the date to lock in a favorable Overnight SOFR for a longer interest period. As such, we would support the use of Overnight SOFR as a daily rate rather than a rate to be used over a longer duration term.

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?

> **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 syndicated 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 syndicated business loans. We further believe that an impartial third party, which is not a party to the credit agreement in question, 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 spread waterfall even if syndicated 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 Overnight SOFR (or potentially the Compounded SOFR) step of the replacement rate waterfall. 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 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?

> **Not at this time.**

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?

> **Under the amendment approach proposal, we believe lender voting requirements should be different depending on whether the trigger is keyed off of (1) an objective event either based on the permanent discontinuation of LIBOR or LIBOR becoming an unrepresentative or unreliable benchmark or (2) a subjective event where the Agent or the Required Lenders determine that syndicated loans are being originated using a new benchmark. For scenario (1), since LIBOR will no longer be published or will be deemed to be unreliable, negative consent by class would be appropriate in certain circumstances. For instance, where a credit facility may include a tranche of revolving lenders and a tranche of TLB lenders, one**

tranche may be more inclined to resist consummating an amendment and therefore fallback to the ABR. Permitting a negative consent vote by tranche is beneficial to borrowers.

(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.

For scenario (2) discussed in the question above or in the "opt-in" amendment process, the affirmative consent (vs. negative consent) of the Required Lenders by class (if applicable) would be appropriate since none of the other objective triggers would have been met, and LIBOR, which is the benchmark that the parties agreed to in the credit agreement, would still be published and available at such time.

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?

Yes, see response to Question 15(a).

(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.

Since the "opt-in" amendment process under the hardwired proposal already requires that (1) new credit agreements reference term SOFR plus a Replacement Benchmark Spread and (2) a certain number of publicly filed credit agreements that reference such rate and spread are available for review, a Required Lenders vote (vs. a supermajority vote) to successfully declare a Benchmark Transition Determination should be sufficient.

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.

(i) Yes, the administrative agent, on behalf of the lenders, 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.

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. The administrative agent's role in a syndicated credit facility is ministerial in nature and, with respect to determining rates, has historically been limited to referencing a rate published on a screen. If the administrative agent was 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.

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?

In general, we do not believe that the traditional role of the administrative agent, or its rights and obligations pursuant to the credit agreement, should be altered by the introduction of the fallback language. If limited to technical changes only, the administrative agent could make amendments to the credit agreement on a periodic, ongoing basis. However, the administrative agent 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 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.

Please see our response to Question 8 above.

Question 21. 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 negotiated on a loan-by-loan basis between the borrower and the administrative agent, and then provided to the lenders to object within a number of days, particularly where one of the Benchmark Discontinuance Events have 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 22. Do you see other operational challenges that fallback language should acknowledge or of which the ARRC should be aware? Please explain.

Operational readiness would largely be dependent upon the lead time that the administrative agent and lenders 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 administrative agent and lenders being able to set up the infrastructure that accommodates the adoption and conversion to the new benchmark. Standardization of fallback language across syndicated 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.

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.

For the amendment approach, since this language focuses on streamlining the amendment process with respect to the syndicate lender's voting requirements, we believe changes to the bilateral documentation would be minimal since at the time that a Benchmark Discontinuance Event occurs, the borrower and the lender will always have the option to negotiate the replacement rate on a bilateral basis. For certain bilateral loans, lenders may consider including the ability to select a replacement rate on a unilateral basis upon a Benchmark Discontinuance Event, without or limiting the borrower's consent right.

For the hardwired approach, we would expect modifications to the language in Appendix II to include: (i) removal of the lender voting requirements in clause (d); (ii) removal of the "opt-in" trigger since the borrower and the lender can bilaterally agree to transition to the new replacement rate once term SOFR and a spread adjustment are being published; (iii) replacement of references to administrative agent with lender and other similar changes to reflect the change from a multi-bank to a single-bank loan; and (iv) simplifying the drafting to accommodate the short form nature of many bilateral loan agreements. For certain bilateral loans, depending on the importance of having such loans hedged, certain borrowers may choose to modify the Replacement Benchmark waterfall, either by removing certain options or modifying the priority of the waterfall in order to match the fallback in the swaps.

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.

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 syndicated 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 syndicated loan markets. Education and awareness of both borrowers and lenders, as well as the standardization of fallback language in the syndicated loan markets will also be key considerations as fallback language is being incorporated into syndicated loan originations.

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

None.