ARRC Consultation regarding more robust LIBOR fallback contract language for new originations of <u>LIBOR Bilateral Business Loans</u>			
Topic	**##**	**Questions**	**Contributor**
Approach to fallback provisions	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? The hardwired approach provides certainty and allows for better risk management in case of Libor disruption from a lender or trading perspective, however, we acknowledge that borrowers may not adopt such language until it is considered market standard and may prefer the amendment approach at first.	
	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? No.	
Triggers	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? We support in principle the use of pre-cessation triggers, to the extent that they allow parties to a bilateral loan to trigger the use of the replacement rate in their contract. Such pre-cessation triggers must be clear and related to objective event and not signal subject to interpretation as it is very important not to create uncertainty. However we do not think that such pre-cessation triggers should be used for the specific case of the transition from Libor to SOFR. We do consider the transition from Libor to SOFR must be done in a smooth and coordinated manner and to do so the transition should be triggered by a communication or decision made by public and/or regulatory authorities so it can be simultaneous across markets and products and avoid fragmentation.	
	3(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. Please see 3(a).	
	3(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? Please see 3(a). To guarantee the most orderly and certain transition possible, a public statement coming from public authorities and explicitly announcing the end of the benchmark is desirable. Having different interpretations of the representativeness of a benchmark should be avoided.	
	4(a)	Is an "opt-in" trigger appropriate to include? Why or why not? We do not think such an "opt in" trigger should be inserted in the bilateral loan documentation. If there is a parallel run for both benchmarks, then participants should have the choice to use one or the other depending on circumstances.	
	4(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) Please see 4(a).	

	5	Are there any other trigger events that you believe should be included for consideration? If yes, please explain. No.	
Replacement Benchmark	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. If the market consensus is to adopt a term rate for bilateral business loans, we support a forward looking rate as the primary fallback. A term-rate with a term spread is in line with our clients' expectations Convergence between fallback & trigger definitions between asset classes (FRNs, Loans, Derivatives) is key in order to avoid fragmentation of SOFR indexed product liquidity, and limit operational/financial risks when dealing with all these products at portfolio level.	
	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? (ii) is better because it is less unilateral and will take account of all the information available in the market, therefore reducing as much as possible the legal risk.	
	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? A forward looking term rate with a term spread is the preferred solution for cash products and a requirement for clients and end users of bilateral loans, especially for medium and small corporates. We also support convergence between fallback & trigger definitions between asset classes (FRNs, Loans, Derivatives) in order to avoid fragmentation of SOFR indexed product liquidity, and to limit operational risks when dealing with all these products at portfolio level, but know that it may be difficult to achieve.	
	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 this context and regarding the specific case of the conditions mentioned; setting in arrears may be preferred. However, we consider that shifting from an "in advance" fixing to an "in arrears" fixing will be very challenging for some borrowers to manage as it would be a significant shift from their current way of managing debt. For this reason, we believe that the best solution is a forward looking term rate, which should ideally be a term SOFR recommended by the ARRC.	
	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)? We agree that Overnight SOFR does not need to be included as a fallback reference rate for bilateral business loans, but think that Compounded SOFR should be avoided, since end users of bilateral loans (especially small and medium corporates) require a term rate with a term spread.	
	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. No	

Spread Adjustments	12	Do you believe that the ARRC should consider recommending a spread adjustment that could apply to cash products, including bilateral business loans? Yes. It would be preferable if the ARRC recommended a spread adjustment for ALL asset classes, including derivatives.	
	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 bilateral business loans may fall back at a different time or to a different rate from derivatives? Please explain. This spread adjustment would not necessarily be appropriate if the Loans fallback to a term rate, which we consider to be the best option for clients and end users. It would only be appropriate if loans end up falling back to daily compounded SOFR, but this is not a replacement rate we would want to include in our waterfall.	
	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? Yes, if the ARRC recommends a term SOFR, with tenors, it should also define a spread methodology to be used with this term SOFR.	
The role of the Lender	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 (ii) Yes (iii) Yes (iv) Yes (v) Yes These activities would need to be conducted (as currently) on a fully indemnified basis.	
	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. We suggest that the lender should be able to designate loan terms unilaterally only if changes are technical and do not impact the economics of the agreement. If the changes impact the economics of the agreement, the lender should involve the borrower in the decision and be subject to the borrower's right to withhold consent.	
	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, to provide transparency and avoid any potential misunderstandings.	
	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? The bilateral lender should be able to make conforming changes when needed.	
Operational.	19	Are there operational concerns about having the ability to convert many loans over a very short period of time? Please explain. Yes, especially if fallbacks rules are not standard from one loan to the other as considerable manual	

		interaction or system overhaul would be required to manage this for which appropriate lead time will need to be factored in.	
	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[16] – do these requirements and the resulting communications between parties impose undue operational burdens? Please explain. Yes, if fallback rates methodologies are significantly different from current rate computation methodologies, systems and processes adaptions will be required for which appropriate lead time will need to be factored in. It will be important to ensure that all vendors (e.g., Marjit/WSO, Sentry, ClearPar) supporting this market are engaged in this transition and adapt their systems in advance.	
Hedged loans	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? We strongly recommend an aligned fallback approach between bilateral lending transactions and their hedges. We do not foresee current swaps being terminated.	
	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. No, the term SOFR, together with an appropriate term spread should be preferred.	
	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? A full conversion would be best; it would get operationally complicated to tranche loans and/or hedges.	
General Feedback	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. Not at this time.	
	25	Please provide any additional feedback on any aspect of the proposals.	