ARRC Consultation

US Securitization Transactions

Question	Proposed answer
Question 1: *Which securitization asset classes are you referring to in your response to this consultation if limited to only certain asset classes? If there are particular features of these asset classes that shape your responses to the questions in this survey, please describe them to the extent possible.*	Yes, we would propose to make a distinction between the following two broad asset classes: (i) We see no need for differentiation of large and highly diversified ABS (RMBS, student loans, etc.); (ii) Non-granular portfolios: CMBS and CLOs The rationale is that the asset trigger proposed would probably work well for highly diversified and granular portfolios, whereas it may actually not fit for less granular portfolios. For example, in CLOs, we would expect the underlying loans to follow the ARRC proposal in respect of syndicated loans. The impact of this on the CLOs is difficult to assess, unless all syndicated loans would go down the hardwired approach proposed in the syndicated loans consultation. A simple answer is in our view not possible to give for the reason above.
Question 2: *The ISDA triggers contemplate a permanent cessation of LIBOR as of a date certain which may be announced in advance (the "Cessation Date"), at which point the transition from LIBOR to SOFR would occur. As there may be operational challenges for securitizations as both assets and liabilities will have to be transitioned, some have asked for the ability to transition in advance of the Cessation Date in order to address any operational issues that may arise. Specifically, the Designated Transaction Representative (as defined in Appendix I) will have the ability to pick one date within a 30-day period prior to the Cessation Date to facilitate an orderly transition. Do you feel the inclusion of this ability to transfer prior to the Cessation Date is*	Yes, we think that some flexibility to pick a date is required We think that this is necessary to manage the approval process , like rating agency confirmation for publicly rated transactions for example.

needed? If so, please explain the specific, critical and tangible needs that support its inclusion?	
Question 3(a): *Should fallback language for Securitizations include any of the pre-cessation triggers (clauses (3), (4), (5) and (6) of the Benchmark Discontinuance Event definition)? If so, which ones? Also, please identify any pre-cessation triggers that you do not believe should be utilized for a particular securitization product and explain why.*	Yes, all events should be included
Question 3(b): *Please indicate whether any concerns you have about these pre-cessation triggers relate to the differences between these securitization triggers and those for standard derivatives or whether your concerns relate specifically to the pre-cessation triggers themselves.*	The concern we would have would be that these pre-cessation triggers create mismatches with ISDA derivatives contracts. The transactions should hence be left with enough flexibility to adjust as much as possible still to ISDA derivatives despite anticipating the transition through these pre-cessation triggers;.
Question 3(c)*: If you believe that the pre-cessation trigger in clause (6) (Asset Replacement Percentage) should not be retained, please note any specific concerns leading to this conclusion. If you believe that it should be retained, are there any changes you believe should be made to this trigger? Please explain.*	We think it should be retained. However, the threshold should maybe be set lower than (50]% and actually make it optional and not mandatory, so as to give transaction parties the possibility to adjust the hedges as appropriate rather than being tied with mandatory provisions;
Question 3(d)*: If you believe the pre-cessation trigger in clause (6) (Asset Replacement Percentage) should be retained, how would you address concerns that it could result in a transfer of value in a transaction where the Designated Transaction Representative has the ability to change the benchmark used on the underlying assets and, as a result, determine the timing of this pre-cessation trigger? Are there other changes that should be made to the Asset Replacement Percentage trigger? Note that this trigger relates to a mismatch between the securities and the Securitization assets that results from changes in the assets. A mismatch may also arise from a change in the securities due to a trigger event under these fallback provisions. Any concerns with the latter scenario can be addressed in responses to Question 16.*	To the extent possible, the MtM of the hedging derivative which will be put in place should not be increased. This would deal with the risk of transfer of value. This may result in a hedge which is less efficient though, as the cost-neutral switch may not be possible unless the new hedging derivative is out of the money. In such a case, the rating agency confirmation would be required as well as noteholder consent. We think that the noteholder consent in such circumstances is preferable, albeit difficult to put in place given the operational burden.
Question 3(e): *If pre-cessation triggers are not included, are there options available to market participants to manage the potential risks involved in continuing to reference a*	Yes, the transaction documentation would typically allow for amendments to be submitted to a noteholder extraordinary resolution.

Benchmark in the circumstances contemplated by each of these pre-cessation triggers?	
Question 4: *Should the proposed securitization fallback language permit the Designated Transaction Representative to transition the securities after a trigger has occurred but before the Benchmark Replacement Date? Should any limitations be placed on its use? Should there be a limited date range (e.g., 60 days) prior to the Benchmark Replacement Date in which this could be used? Should the Designated Transaction Representative be limited in the circumstances under which it could elect to utilize the additional time? If so, what standard should be utilized to assess whether the additional time is necessary? In each case, please explain why.*	1) Yes, we think that the transition can occur on a date that is different from the Benchmark Replacement Date as swaps are typically specific to securitisations and are less dependent on the ISDA markets. The transition would anyway require the consent from the hedge provider and so the hedge provider would consciously take into consideration his potential mismatch risk when providing his consent. 2) Yes, apart from the points raised in the preceding responses, the transaction representative should be limited in the flexibility he has so that any amendment can be argued as being “technical” (albeit not necessarly minor) but which may be less stringent in terms of quorum and majority for any extraordinary noteholder votes 3) The standard should be by reference to ISDA transition date so that the switch can occur
Question 5(a): *If the ARRC has recommended a forward-looking term rate, should that rate be the primary fallback for the securities referencing LIBOR even though derivatives are expected to reference overnight versions of SOFR? Please explain why.*	Yes, operationally easier but only if ISDA contemplates the same fallback provision or if there is an ISDA derivatives market for term rates
Question 5(b): *Is there a specific reason that the securitization market should first fall back to forward-looking term SOFR instead of another rate? Please explain why.*	Yes, operational issues, but only if ISDA derivatives available
Question 5(c): *Is the use of an Interpolated Period appropriate in the securitization markets? Please explain any limitations that should be applied to the use of an Interpolated Period.*	Yes, it can be appropriate to make sure that adjustments would as soon as possible match again the transaction interest payment dates
Question 5(d): *In the event a Replacement Benchmark is determined other than under Step 1 of the waterfall, should the waterfall provide that the Replacement Benchmark be changed in the future as soon as a rate can be established under Step 1 of the waterfall?*	Yes, this optionality should be provided so that the transaction could switch to term rates or ISDA fallbacks in particular in case any of these would not be available at the time the transaction switches but become available at a later date

Question 6(a): *Should Compounded SOFR be the second step in the waterfall? Would this preference be influenced by whether ISDA implements fallbacks referencing Compounded SOFR or overnight SOFR?*	1) Yes 2) yes
Question 6(b): *If you believe that Compounded SOFR should be included, which compounding period is preferable ("in arrears" or "in advance")? Please explain why. Would this preference be influenced by whether ISDA implements fallbacks referencing Compounded SOFR "in arrears" or "in advance?" Please explain whether your preference is based on operational concerns in implementing a particular approach or on economic concerns.*	We prefer "in arrears" as it is likely to be the fallback adopted by ISDA. Our choice could change if ISDA fallbacks were to evolve.
Question 6(c): *If it was necessary to calculate Compounded SOFR and a third party was not available to perform those calculations, are there parties to the Securitization transactions with sufficient resources to perform those calculations accurately and efficiently? Are there other considerations relating to the calculation of Compound SOFR that would make it an undesirable Replacement Benchmark without the availability of a third party provider?*	Yes, we think that the calculation agent of a securitization transaction can perform this role based on the ISDA conventions in particular. We do not see any particular concern, but still have a strong preference for an external service provider because it would make things easier in terms of operational set-up. As of today, the connection to the relevant Bloomberg/Reuters rate screens is automated and having the RFRs available on those same pages would help significantly in enhancing the IT systems;
Question 7: *As noted, this consultation does not include Spot SOFR as a third step in the waterfall. Do you believe that Spot SOFR is an appropriate fallback reference rate for Securitization contracts or should the second step in the replacement rate waterfall be Compounded SOFR , after which the replacement rate would be, first, recommended by the Relevant Governmental Body, second, default to then-current ISDA Definitions, and third, proposed by the Designated Transaction Representative?*	No, only compounded SOFR should be used and not Spot Sofr which is not representative of lending costs and could trigger other issues
Question 8: *In the future circumstance where there is no SOFR-based fallback rate, is the replacement rate determined by the Relevant Governmental Body the best alternative at this level of the waterfall? Please explain why.*	No, our preference would be to adopt to then current market practice first to avoid mismatch risks
Question 9: *In the future circumstance where there is no SOFR-based fallback rate and the Relevant Governmental Body has not recommended a replacement rate for Securitizations, is the fallback for SOFR-linked*	1) Yes 2) Yes, provided it is consistent ith adjustment spreads used in the market by that time

derivatives set forth in the ISDA definitions at the time of cessation the best alternative at this level of the waterfall? Is this fallback appropriate if ISDA Definitions only include overnight fallback rates? Please explain why.	
***Question 10(a)**: Since it is unlikely that there will be no ISDA fallback (clause (a) above), this provision is more likely to occur (if at all) when the ISDA fallback is deemed not appropriate for securitization securities (clause (b) above). In that scenario, is this provision appropriate as the final step in the Replacement Benchmark waterfall? Please explain why.*	Yes/ We think it is appropriate because it would allow to adopt the fallbackwhich is deemed to be the best for a given transaction
***Question 10(b)**: Should the provision allow for "re-testing" the waterfall to determine whether another Replacement Benchmark has become available in the scenario where investors have rejected the Proposed Replacement Benchmark? Should the waterfall be re-tested in any other circumstances (e.g., any time the Replacement Benchmark has been determined under a "less-desirable" clause)? How often? Please explain why.*	Yes, it should be included as market circumstances may change which could justify switching to a different option after a first transition to an alternative benchmark
***Question 11**: Are there any concerns if a spread adjustment was utilized with cash products that was calculated by a spot rate comparison of the difference between LIBOR and the Replacement Base Rate at the time of conversion? Should this option be included in the spread waterfall? If so, where?*	Yes, the main concern is that this would deviate from anticipated ISDA conventions (historical mean-median spread). Generally speaking, we would prefer that non-ISDA contemplated fallbacks are not proposed in the fallback provisions or otherwise have the flexibility to depart from those in case market practice should change
***Question 12:** Do you believe that the ARRC should consider recommending a spread adjustment that could apply to cash products, including Securitizations?*	Yes for cash products other than securitisations, as securitisations are very specific and it is unlikely that any spread adjustment proposed by ARRC could fit. IN particular, the amortising feature of securitizations would make it in our view difficult if not impossible for ARRC to make a meaningful proposal for securitization products. In our view, only a central repository disposing of the entire information in respect of a securitization transaction could be an option as independent third party to make a proposal
***Question 13(a):** Is a spread adjustment applicable to fallbacks for derivatives under the ISDA definitions appropriate as the second priority in the spread waterfall? Please explain why.*	Unable to opine given that transaction specificities make it impossible to make a general statement for the same reason as those mentioned under question 12

Question 13(b): *If the ARRC has recommended a forward-looking term SOFR but has not recommended a corresponding spread adjustment under Step 1 above, do you believe that the ISDA spread adjustment described in Step 2 (which may be intended to apply to a different Replacement Base Rate) should apply to Securitizations? Please explain why.*	No, not necessarily for the same reasons as those given in Question 12 (transaction specific parameters such that it is difficult to make a one-size-fits-all spread adjustment)
Question 13(c): *Given that ISDA has not yet decided upon the spread calculation methodology[16], should Step 2 be excluded from the waterfall? Please explain why.*	We think it should be excluded, but not necessarily for the reason mentioned. We rather expect each transaction to be so specific that a one-size-fits-all approach will not be satisfactory.
Question 14(a): *What type of institution can and should take on the responsibility to (i) determine whether the proposed triggers have occurred, (ii) select screens where reference rates or spreads are to be found, (iii) make calculations of a rate or spread in the absence of published screen rates, (iv) interpolate term SOFR if there is a missing middle maturity and/or (v) elect to cause an early transition under the proviso to the definition of Benchmark Replacement Date?*	(i) Calculation Agent/trustee of the transaction (ii) Calculation Agent/trustee of the transaction (iii) Calculation Agent/trustee of the transaction (iv) Calculation Agent/trustee of the transaction (v) Trustee of the transaction
Question 14(b): *Whether as issuer, sponsor, servicer or calculation agent, would your institution be willing to (i) determine whether the proposed triggers have occurred, (ii) select screens where reference rates or spreads are to be found, (iii) make calculations of a rate or spread in the absence of published screen rates, (iv) interpolate term SOFR if there is a missing middle maturity and/or (v) elect to cause an early transition under the proviso to the definition of Benchmark Replacement Date?*	We could envisage making such determination for tranactions arranged by our company. For transactions not arranged by us, we think that we would not have the required level of information to make a meaningful proposal unless we would be provided with all transaction details. In many cases, it will also depend on the hedging swaps included in the securitization transaction and our capabilities to offer as a firm such hedging swaps. Absent such a capability, we do not think that we would be best placed.
Question 15: *Is there any provision in the proposal that would significantly impede Securitization issuances? If so, please provide a specific and detailed explanation.*	Noting to add
Question 16: *Given the fallback language for the Securitization and the underlying assets may operate independently, please identify any sources of misalignment between those components that are not addressed in the consultation.*	Nothing to add

Question 17: Are there specific operational challenges that implementing the proposed fallback language might create for securitizations? If so, what are those challenges and under what circumstances might they occur? How might they be mitigated?	Given the specificities of securitization transactions, the transaction representative should always have the flexibility to consult experts and propose alternative solutions if deemed appropriate and propose an overwriting fallback solution
Question 18: Please provide any additional feedback on any aspect of the proposal.	We have concerns about the spread adjustment re ISDA which may not be relevant at all;