General Approach of the Two Fallback Proposals

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 hardwired approach? Why?

Response: We recommend using the amendment approach until further market infrastructure needed for cash products is established, commercially viable and broadly accepted, and client adoption of SOFR has become more evident in the derivatives and markets for similar cash products. Once these dependencies are met, we believe market participants will move to adopt the hardwired approach as a means to ease the operational burden of transitioning legacy contracts per widely accepted protocols.

Market infrastructure, which is important to us and our clients, includes both term rates and an acceptable spread adjustment method. Our clients advise us term rates are important as a means to manage near-term interest rate risk and to ease cash management planning for interest payments. Notably, our clients rarely seek any overnight pricing in credit agreements, but instead typically utilize tenors such as 1-month, 3-month, 6-month and 12-month periods. Additionally, market participants which are active in the secondary market trading syndicated loans find term rates useful in speeding accurate settlement of trades. As the interest payment for a term-priced loan is easily calculated for the subject interest period, settlement of payments between investors trading loans in the secondary market is straightforward.

Another critical dependency for market acceptance is the development of a well-understood and accepted credit spread adjustment methodology. This is one of the primary reasons why clients – and lenders or loan investors – are reluctant to immediately use a hardwired approach. While the negotiation-based amendment approach does not provide certainty of rate selection, it provides a means to ensure the interests of both borrower and lenders are represented in the determination.

Finally, the basis risk between loans based on term SOFR and hedging instruments (e.g., interest rate protection) referencing overnight SOFR represent a potential impediment to SOFR adoption by syndicated loans. This is particularly acute in a rising interest rate environment. Ensuring access to interest rate protection on a like basis between loans and derivatives (without the use of additional derivatives) is a repeated subject of discussion with clients.

Regarding evidence of market acceptance of SOFR, we note there are numerous issuances of floating rate notes which have successfully priced at SOFR and very recently, the first corporate issuance of SOFR-priced commercial paper. Continued issuances in various cash products by corporate issuers increases the likelihood of market acceptance by borrowers of syndicated business loans. Similarly, continued and increasing adoption of SOFR-based derivatives products is also critical.

Triggers

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?

(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.

(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?

Response: All triggers need to be clearly defined and based on publicly available data so there is no debate on whether a trigger has occurred, and the occurrence of any trigger is recognized consistently by contracts within and across products. We recommend adopting ISDA triggers and selectively adding loan-specific triggers.

(a) *Yes, business loans should include pre-cessation option 5. See further comments below.*

(b) *Pre-cessation triggers 3 and 4 are unnecessary. Trigger #3 doesn't add any benefit that isn't already covered by triggers 1, 2, 5 and the "opt-in" clause. Regarding trigger #4, it is commercially impractical for lenders to monitor how the LIBOR administrator is administering its submissions policy and to hold lenders contractually accountable to have that knowledge.*

(c) *A pre-cessation option should be included which reflects a market move to the replacement rate for newly originated loans. This enables lenders and borrowers to "opt-in", thereby avoiding or reducing any unknown impact to pricing that occurs with LIBOR cessation.*

Question 3. (a) Is an "opt-in" trigger appropriate to include? Why or why not?

(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.

Response: (a) Yes, as discussed above, an opt-in clause should be included, assuming agreement of the borrower and lenders. The inclusion of an "opt-in" clause solves some issues related to #4 trigger, while preserving the flexibility for lenders and borrowers that is unique to the loan product. Of course, the "opt-in" clause is an option and does not lead to an automatic conversion.

(b) We prefer the approach in the amendment proposal (see response to Question 2(c) above), but in any event would prefer the trigger to be subject to negative lender consent.

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

Response: No. We believe it is counter-productive to include other triggers attempting to cover circumstances which may not arise and / or are challenging to document in a contract. Further, use of the "opt-in" clause provides an additional means for a negotiated move to using SOFR.

The Replacement Benchmark

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.

Response: Yes, term SOFR should be the primary fallback rate to ease the process of transitioning off term LIBOR and reduce the number of adjustments required to enable such transition. Further, derivatives which hedge interest rate risk should also be permitted to reference term SOFR to enable hedging of those risks without requiring the use of another derivative. As described previously, use of term SOFR improves the ability of clients to manage interest payments and lenders or loan investors to trade loans in the secondary market.

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?

Response: Yes, lenders or administrative agents should be able to eliminate any interest periods for which term rates are not published and should not have the burden or responsibility of creating the rate for periods not available from the benchmark administrator. Standard published term periods should include 1-month, 3-month, 6-month and 12-month periods.

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?

Response: No. Term SOFR should replace LIBOR as the primary reference rate applicable for loans. Similar to current practice, if term SOFR for the applicable interest period becomes temporarily unavailable, the rate could fall back to a definition of Base Rate that could include overnight SOFR as one of the "higher of" choices (Prime, Fed Funds plus 50bps, and O/N SOFR+spread adjustment). This would greatly simplify the transition by generally leaving in place the current approach to fallbacks in the syndicated loan market, including the ability to amend, as opposed to requiring a waterfall of complex calculations that impact both borrowers' and loan market participants' ability to predict payments. Additionally, the use of Compounded SOFR will be unacceptable to clients, who typically reconcile interest invoices prior to paying them. The burden will be particularly heavy for smaller clients with limited financial staffing. It also complicates and slows the ability of market participants to trade loans in the secondary market, and it will increase operational burden as buyers and sellers must spend more time reviewing and validating the appropriate amount of interest income the seller should receive mid-interest period. Further, syndicated loans are generally five to seven years in tenor, and using an interest rate based on the past does not accurately represent current or future economic or interest rate risk.

The Replacement Benchmark, continued

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.

Response: Term SOFR should be the primary reference rate applicable for loans. See response to Question 7. Compounding in advance or arrears does not reduce the burden.

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.

Response: No. Term SOFR should be the reference rate applicable for loans. However, if term SOFR is temporarily unavailable, an appropriate fallback would be to Base Rate, revised to include O/N SOFR as described in the response to Question 7.

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.

Response: No. Syndicated loans are generally five to seven years in tenor and using an interest rate based on the past does not accurately represent current or future economic or interest rate risk. The rate would be viewed as stale, particularly during a rising or falling interest rate environment. This approach is so different from the forward-looking view provided by LIBOR today, we believe it could impede adoption of SOFR.

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?

Response: No. Term SOFR should be the only reference rate applicable for loans, with a standard fallback to Base Rate in the case of temporary unavailability, revised as described in the response to Question 7.

Spread adjustments

Question 12. Do you believe that the ARRC should consider recommending a spread adjustment that could apply to cash products, including syndicated business loans?

Response: Clients desire term SOFR and we strongly prefer for the ARRC to publicly recommend a spread adjustment to term SOFR for cash products which minimizes value transfer as a result of transition. Endorsement by the ARRC will support end user adoption of the spread adjustment, particularly given the broad range of end users across cash products (and also derivatives).

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.

<u>Response</u>: It remains to be seen whether the adjustment method adopted by the derivatives market is applicable for use with loans. The spread adjustment defined by ISDA only relates to overnight SOFR, and loans will need a spread adjustment that uses term SOFR. Additionally, loans may have other adjustment needs beyond what derivatives require. It is also important to note that derivatives are permitted to match the product being hedged in other jurisdictions and not allowing derivatives to match introduces a complexity in the US market.

<u>Question 14.</u> 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?

<u>Response</u>: No. The same spread adjustment method should apply to either the hardwired or the amendment approach.

<u>Lender vote</u>

<u>Question 15.</u> (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?

(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.

<u>Response</u>: (a) We prefer voting rights which ensure the different classes remain on the same benchmark rate, to ensure alignment of interests across lenders in different tranches.

(b) "Opt-in" amendment process should be governed by negative consent of Required Lenders, similar to the selection of a replacement rate and other decisions taken in the amendment approach.

<u>Question 16.</u> (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?

(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.

<u>Response</u>: (a) We prefer voting rights which ensure the different classes remain on the same benchmark rate, to ensure alignment of interests across lenders in different tranches.

(b) Either approach is acceptable. To the extent the spread adjustment method is endorsed by the ARRC and acceptable to the market, lenders and borrowers may be less concerned about the potential for economic transfer, and the market may adopt a Required Lenders threshold in this area. If the spread

adjustment method creates meaningful risk of economic transfer, then it is likely a supermajority threshold will be desirable to the market.

The role of the administrative agent

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.

Response: Our institution, acting as administrative agent, would be willing to work with borrowers and lenders to identify a new reference rate and screen location, applicable spread adjustment and technical/operational amendments in the event there is no prevailing successor to LIBOR. However, undertaking individual bespoke negotiations would be enormously burdensome and complicated for administrative agents, and confusing for clients. We strongly prefer for an industrywide solution to enable a transition away from LIBOR.

We do not support the use of interpolated rates, per response to Question 6.

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?

Response: Yes. Sourcing the replacement rate and spread adjustment from a third party screen eases operational feasibility and prevents disagreement on determination of the all-in rate. Additionally, systematic supply of all of the benchmark components (index, credit spread adjustment and tenor adjustment, if needed) would greatly simplify the operational mechanics of changing interest rates on loan accounting systems for all market participants.

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?

Response: The administrative agent must maintain the right to make conforming changes on an ongoing basis as market infrastructure matures around SOFR. Once there has been a period of stability (for example, in the calculation method, production and publication of forward term rates) as well as strong market adoption of common standards, we would expect the need to make conforming changes to ease and eventually end. This assumes any issues around definition of the new benchmark rate, triggers and spread adjustment have been resolved, the market is consistently using the same contractual definitions and there is not confusion or litigation in the market as to how to apply these definitions.

<u>Operational considerations</u>

<u>Question 20.</u> 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.

<u>Response</u>: We believe the use of compounded rates will decrease and slow adoption of replacement rates. See response to Question 7.

<u>Question 21.</u> Are there operational concerns about having the ability to convert many loans over a very short period of time? Please explain.

<u>Response</u>: Yes, converting legacy syndicated facilities will require manual coordination to facilitate the amendment process and fulfillment duties. Staffing considerations would need to reflect the sudden increase in operational demands. The burden is amplified if challenges to adoption have not been resolved, such as delivery of forward term rates, a satisfactory spread adjustment and availability of interest rate hedges using a like basis as the loan being hedged.

<u>Question 22.</u> Do you see other operational challenges that fallback language should acknowledge or of which the ARRC should be aware? Please explain.

<u>Response</u>: The ARRC should be aware that any SOFR mechanics left to be calculated by banks, as opposed to obtained from a third party (i.e., spread adjustment or interest rates for each available forward period) will negatively impact the operational mechanics of implementing of SOFR. It is likely internal systems will need technical enhancements. It also increases the likelihood of disputes among parties.

<u>Bilateral loans</u>

<u>Question 23</u>. 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.

<u>Response</u>: Triggers and rate definition including spread adjustment should be the same. Lenders with direct hedging programs should contemplate ensuring loan and derivatives triggers are identical.

<u>General feedback</u>

<u>Question 24</u>. 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.

<u>Response</u>: Compound pricing that cannot be forecasted (i.e., through forward looking term rates) will complicate the trading of loans and require a delayed settlement date or double the work to ensure interest income has been accurately allocated.

<u>Question 25</u>. Please provide any additional feedback on any aspect of the proposals.

<u>Response</u>: NA