ARRC consultation regarding more robust LIBOR fallback contract language for new orginations of LIBOR syndicated business loans

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?

Currently, our preference is the amendment approach. Hardwired introduces too much uncertainty as it commits to a term structure and spread that have not been defined today – this could be very costly to us given we're a corporate with the majority of our risk one way. Before committing to the hardwired approach we would need to see how spreads to SOFR (or alternative RFR) will be calculated and the value impact to our portfolio as this will ikely be applied to our legacy portfolio too.

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? None if this could result in a forced basis risk scenario, if the ISDA templates / tools were accepted by hedge counterparties then all three pre-cessation triggers are reasonable

(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. Yes, we want to avoid basis risk

(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? Isn't this the case today?! At least today our loans and hedges match with no basis risk thus providing us certainty and a truly hedged position.

Question 3. (a) Is an "opt-in" trigger appropriate to include? Why or why not? Yes, as it provides a pragmatic function (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. Amendment proposal as it provides us with more flexibility over timing

Question 4. Are there any other trigger events that you believe should be included for consideration? If yes, please explain. No

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. No. We using derivatives to hedge our loan exposure and want the two to be aligned – we do not wish to introduce basis risk. Please align with ISDA / the derivatives 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? We support option ii. However, see our response for Question 5.

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? Yes, it should. It is the logical next step and hopefully the fallback selected by ISDA.

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. Compounded in arrears is preferred as it reflects the true underlying market conditions (provided there is a small lag, say 5 business days, for settlement after the accounting period). Hopefully this is the method selected by ISDA. For any corporates who are hedged, they know their gross settlement and this is the most important aspect (with the net settlements netting off against each other)

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. Overnight SOFR is not appropriate for the reasons detailed in the paper.

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. It is not acceptable, we are not in a position to answer the second part of this question.

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? No

Question 12. Do you believe that the ARRC should consider recommending a spread adjustment that could apply to cash products, including syndicated business loans? No. Please align to ISDA

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. Please align with ISDA to ensure the fall back event occurs at the same time and to the same rate.

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? No

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? Yes (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. Negative consent given the volume of lenders in some facilities.

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 (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. Majority, given the volume of lenders in some facilities.

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. N/A – we do not act in this capacity.

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 as this will help facilitate any transition. The easier the process is made and the more information provided the better. It will help market participants examine changes over 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? At the point of transition only to prevent overload and complexity.

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. No, this is not a problem at all for us as we are hedged. People borrow today in the UK against Bank of England base rate that is daily compounding and do not experience any issues.

Question 21. Are there operational concerns about having the ability to convert many loans over a very short period of time? Please explain. Yes, of course. Given the complexity of facilities, volume of lenders, involvement of many parties with competing agendas, technical and resource constraints, potential costs, potential for mistakes, etc.

Question 22. Do you see other operational challenges that fallback language should acknowledge or of which the ARRC should be aware? Please explain. Timing. Whilst LIBOR cessation is not expected until the end of 2021, things need to move rapidly now to provide market participants sufficient time to manage the transition, this will include time to assess the impact of any changes (for example, the financial impact of any term structure proposal or the level of spreads to be applied to SOFR, SONIA, etc.). We operate across many different jurisdictions and the more time we can be provided with to prepare the better. Similarly, we ask for co-ordination across jurisdictions and where possibly provide consistency of approach (rather than UK or EU adopting different methodologies from the US for example).

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. Other than the obvious amendments to capture the reduction in the number of lenders, we cannot think of any.

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. Providing they are consistent with ISDA's approach, then we cannot foresee any significant barriers.

Question 25. Please provide any additional feedback on any aspect of the proposals. Dear ARRC, many thanks for such an extensive consultation paper. We are a corporate who borrows using syndicated term loans (along with bonds, RCFs, etc.). We hedge this risk using derivatives. We do not think it is acceptable for any position to be adopted whereby basis risk is introduced. We do not wish to experience a material value adjustment across our loans and hedges following any cessation of LIBOR or transition away from LIBOR event. We are happy and able to use compounded SOFR in arrears, with a small settlement lag, say 5 business days. We would welcome solutions from ARRC that are inline with the ISDA recommendations – this will ensure a smooth transition across the market as a whole and reduce the opportunity for some market participants to profit from the transition. We welcome a timely publication of LIBOR fallback language to ensure momentum in transitioning away from LIBOR is created and maintained. We are active in the loan markets and wish this matter to be resolved so new borrowing that goes beyond the expected LIBOR cessation date is captured today. Many thanks and kind regards.