Responses to the ARRC Consultation Regarding More Robust LIBOR Fallback Contract Language for New Originations 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?*

The hardwire approach is the more appropriate policy to be adopted by the ARRC. The hardwire approach has several distinct advantages over the amendment approach including that it provides the market greater certainty upon the occurrence of a LIBOR cessation event. The hardwire approach also does not create the same level of operational challenges that the amendment approach inherently entails. We believe that Term SOFR will exist before LIBOR cessation however the built in flexibility of the hardwire waterfall provides enough fallback options to allow the credit documents to continue to function through the waterfall even if Term SOFR does not yet exist. Finally, the hardwire approach does not create winners/losers that an amendment approach would create depending on the current point in the market cycle at LIBOR cessation.

Question 2(a): *Should fallback language for business loans include any of the precessation triggers (triggers 3, 4 or 5)? If so, which ones?*

The fallback language should include all three of the precession triggers. The market is best served by having the ability to move to SOFR before LIBOR cessation. It is likely that the quality of LIBOR will decrease and the market will become less confident in LIBOR as we move closer to the likely 2021 end date.

Question 2(b): *Please indicate whether any concerns you have about these precessation triggers relate to differences between these triggers and those for standard derivatives or relate specifically to the pre-cessation triggers themselves.*

We have only two concerns with respect to the proposed pre-cessation triggers. First, we are concerned that the precession triggers referencing a "public statement or publication" are subject to possible ambiguity as to how that is determined. It is possible that a statement could be deemed to qualify as a trigger by some parties but not by others resulting in confusion. A central authority charged with interpreting any statement and if such statement qualifies as a trigger under the ARRC hardwire framework would assist in avoiding market confusion or inconsistent application of the triggers. Second, we are not sure that five consecutive Business Days is the appropriate number of days without a published LIBOR rate. The failure to report LIBOR due to a temporary moratorium, embargo or disruption is already carved out so such an extended length of time where LIBOR is not reported yet the trigger event does not occur is not necessary and may cause confusion in the markets. We think that a shorter time period would be appropriate.

Question 2(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?*

If pre-cessation triggers are not included, the only remaining ways to manage these potential risks would be for a full amendment with all affected lenders approving a new reference rate or a refinancing of the facility. Either of these processes would be expensive and burdensome and would likely result in winners and losers depending on where the market is in the credit cycle.

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

We believe an opt-in trigger is appropriate to include. The market will be better served if loans begin move from LIBOR to SOFR before the cessation date.

Question 3(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.*

The hardwire approach is again the preferred method for all of the reasons of certainty and ease of administration as discussed in the response to Question 1. However, the concept of only requiring two loan facilities to use SOFR as the number required for the opt-in trigger seems low. For such a large market there should be more diversity in the borrowers and agents using SOFR to show a true move by the market to SOFR. We would also want a time frame within which the selected number of loan facilities had referred to Term SOFR. An indefinite period of time for this could force agreements containing the hardwired language to move to SOFR when that rate is not yet representative of the broader market (i.e. two syndicated loan facilities refer to Term SOFR but those two facilities closed several months apart).

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

We do not think there are additional trigger events that should be included.

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.*

The forward-looking term rate should be the primary fallback for syndicated loans referencing LIBOR as it is the closest approximation to the term LIBOR rate that the market is based upon.

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?*

The administrative agent must always have a role in these matters and should be able to make technical adjustments related to any proposed replacement rate in their reasonable discretion and consistent with market conventions. Option (ii) is the better of the two choices, provided the lenders have some form of consent. Given the uncertainty related to SOFR, the method of the determination of the replacement rate, and to avoid the possibility of winners and losers, the decisions related to replacement interest period options, etc. should not reside with a single party.

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?*

The concept of compounding makes sense on a temporary basis until the ARRC has successfully endorsed SOFR term rates. The spiking of SOFR at the end of each quarter would have to be factored into any proposed spread adjustment to SOFR need to preserve valuations on pre-benchmark transition loans.

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 SOFR in advance is the preferable approach. Since Compounded SOFR in arrears will not be known at the start of the interest period, the ARRC does not anticipate a Term SOFR rate being available until 2021, and the most reliable data available at this juncture (in the absence of 1-month or 3-month SOFR futures) are the historical SOFR rates which Compounded SOFR in advance relies upon.

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 could be an acceptable fallback reference rate for syndicated loans, but it also comes with its set of challenges. Lenders may have difficulty accepting daily LIBOR for periods longer than a few days. It would likely be overwhelming for some banks to accommodate daily SOFR, and it would be challenging on both sides of the transaction from a loan servicing/billing, and asset management perspective. The potential for a spike in daily SOFR at the end of a quarter could result in distortions in valuations. In such a situation, it would be expected that internal and external human and system resources would become strained. If ISDA implements fallback referencing compounded SOFR or overnight SOFR their decision could have a dramatic impact on valuations and how our industry reacts to the options. The ability to price loans, valuations, hedge interest rate risk, etc., will all be affected by their decision.

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*

Our experience has been that lenders prefer not to make long-duration loans based on an overnight index. The universe of lenders willing to make long duration loans priced over Overnight SOFR will be limited.

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?*

The Federal Funds Rate ("FFR") is an attractive alternate index because it has historically been more closely correlated to 1-month LIBOR than any other index, except during the global financial crisis. The FFR would come into play when LIBOR is deemed to be unsupported, unavailability, if there was a temporary halting of LIBOR or its discontinuance and SOFR has not been definitively announced and a market established for the Replacement Benchmark.

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

A spread adjustment is appropriate as the all-in rate for loans that move to SOFR will need to retain the same economics as the LIBOR plus spread predecessor to avoid other compilations and maintain proper valuations. Moving to SOFR without some kind of "spread adjustment" would result in effectively repricing a loan to a lower rate without the corresponding ability to properly revise the spread to produce equivalent valuations and yield expectations pre and post transition.

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.*

No - If the ISDA spread adjustments are applicable to loans that have not already been amended they should not be amended until ISDA implements their fallbacks in early 2019, and even then, they should not be amended until there is a discontinuance of LIBOR.

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 other spread adjustment necessary.

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?*

Required Lenders should have an objection right to the selection of replacement rate, however, this vote should not be by class. Objection by a single class of interest holders could prevent the selection of a replacement rate that would disadvantage the other lenders and the borrower. If the Required Lenders agree to proceed with the replacement rate, a single class should not have the ability to hold that change up.

Question 15(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.

An opt-in trigger should be subject to an affirmative consent process by the Required Lenders. The change of the lenders' sacred rights would normally require a 100% vote. While a lower standard of consent is appropriate in these circumstances, due to the magnitude of the change it is more appropriate to have an affirmative consent requirement than a negative consent mechanic for the opt-in process. However, we do not think that this consent should be by class of holder because a minority class could prevent the majority holders of interests from proceeding with a replacement rate.

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?*

Required Lenders should have an objection right to the selection of replacement rate, however, this vote should not be by class. Objection by a single class of interest holders could prevent the selection of a replacement rate which would disadvantage the other lenders and the borrower. If the Required Lenders agree to proceed with the replacement rate a single class should not have the ability to hold that change up.

Question 16(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.*

Required Lenders is the appropriate standard for major decisions in syndicated loans. A supermajority requirement would give a minority interest holder a veto over the preferences of the largest lenders and majority holders. There could be a stalemate until the withholding lenders get what they want, and the loan would be subject to the alternative benchmark rate, which if it includes the Prime Rate, would be disadvantageous to the borrower, and could possibly result in covenant defaults related to debt yields or debt service coverage ratios, among others. A Required Lenders standard would also lower the operational burden on getting the required consents to proceed with the opt-in trigger compared to having a supermajority of lenders consent.

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.*

Yes, we would be willing to work with borrowers for all five of the noted actions provided there was no contractual, legal or regulatory reason that would prevent us from doing so.

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. Market participants (lenders, borrowers, intermediaries, etc.) currently have the ability to monitor movements in LIBOR to evaluate the price and direction of loan instruments and derivatives. We regularly provide pricing guidance to loan underwriters, acquisitions and asset management professionals who incorporate financing costs into their underwriting projections of expected levered returns. Preserving this vital data point is essential to the successful execution of our investment advisory platform.

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?*

Changes in the requisite benchmark is a major decision affecting the lenders' sacred rights that are not expected to happen on a regular basis. None of the administrative agent, Required Lenders, or the borrower should expect to make periodic changes to the method of determining the Replacement Benchmark or the calculation of interest due under the loan. This is a market driven event that will have a paced implementation and will be subject to a mutually negotiated loan modification. It is not expected to be repeated or have any on-going loan modifications. Further, all loan parties should seek to avoid multiple adjustments in the interest rate, method of calculation or valuations, among other things.

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.*

Knowing the cost of funds in very important to determining which source of funds a borrower might want to use. Any (unknown) rate calculated at the end of the interest period carries more uncertainty that a rate compounded in advance. Not having a rate the borrower can see prior to making a borrowing decision would be market altering, and my not be accepted by the market. Would possibly result in borrowers converting to fixed rate loans, or even bonds.

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

The amendment approach creates a multitude of operational concerns. Converting a loan over a short period of time, let alone multiple loans, types and structures would be challenging and resources (borrowers, agents, lawyers, etc.) would all be stretched thing. There are fewer operational concerns with the hardwire approach. Interest rates are typically reset every one to three months and nearly all deals have at least one payment due at the end of each calendar quarter. If the hardwire fallback language is complete, it becomes a simple process operationally.

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

We have a series of questions that seem to remain open points which the market will need to resolve: What happens with LIBOR based hedges that one side is in the money on; how would the mark-to-market valuations of those derivatives be impacted and offsetting payments against interest owed on loans? What happens if valuations are adversely impacted and those value changes trigger covenant defaults or activate cash flow sweeps under the loan? How will the conversion impact the sales and acquisition side of the business and to what degree will underlying business plans have to change or factor into our business planning cycle?

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.*

While there is more flexibly to make changes or do an amendment in these facilities the hardwire approach would still be preferred due to the operational challenges with facilitating these updates after a LIBOR cessation.

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.*

There are no provisions that we believe would impede originations.

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

The hardwire approach should include a notice requirement so that all parties know when a trigger event has occurred and the replacement rate selected through the waterfall will come into effect.