November 22, 2018

Alternative Reference Rates Committee ("**ARRC**")

Via email submission to: arrc@ny.frb.org

Re: Consultation Response – Syndicated Business Loans

TD Bank Group ("**TD**") welcomes the opportunity to respond to the ARRC Consultation regarding more robust LIBOR fallback contract language for new originations of LIBOR syndicated business loans. TD recognizes the need for the identification of industry standards and best practices in determining effective fallback language for the identification of alternative rates and calculations of effective, non-value transfer spreads as a means to prevent market disruption in the event that LIBOR does not exist or is not viable beyond 2021. In addition, TD appreciates the efforts of the ARRC Syndicated Loans Working Group in developing a consultation that takes into consideration discussions in the derivatives market, given the benefits of consistency across cash and derivatives products.

As an overall caveat, while we understand that the Federal Reserve Bank of New York ("**FRBNY**") is actively working to develop forward-looking term SOFR and this work effort is supported by TD, without an existing market at this time it is challenging to provide a clear view on whether we can practically affirm the waterfall. With that in mind, the response to this consultation is an initial TD view but may be subject to change as more information becomes available.

Responses to Questions:

1): If the ARRC were to adopt one or more sets of business loan fallback language, which one or both of the recommended provisions (amendment or hardwired), 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?

Overall, TD supports the hardwire approach with the assumption that forward rate term SOFR exists at the time of a trigger event. From an operational standpoint, it would be difficult to amend a significant number of loan contracts using the amendment approach. Additionally, we believe that the hardwire approach may reduce litigation risk, given that rate and spread have limited discretion. However, if Term

SOFR does not exist, we recognize that this structure may not be viable, in which case clients may prefer the "amendment" approach.

2(a): Should fallback language for business loans include any of the pre-cessation triggers? If so, which ones?

While TD supports pre-cessation triggers and recognizes the value they add from a contractual and operational perspective (particularly in avoiding a zombie LIBOR situation), we would want the language to be as clear as possible in order to limit any discretion around the trigger. Our key concern is alignment with the industry. We believe that triggers 3 and 4 are sufficiently clear in order to limit discretion, however trigger 5 leaves open the possibility for issuers to interpret certain statements by a regulator in different ways. As an example, parties could interpret statements already made by the FCA regarding LIBOR as sufficient for this trigger.

2(b): 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?

We are concerned about the possible basis risk issues resulting from business loans triggers differing from derivative triggers and would encourage industry solutions to mitigate this risk.

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?

While not ideal, we could potentially rely on standard gross up provisions, which come into effect if there is a "Change in Law" that increases cost of funding or reduces return and requires the borrower to make up the difference. Change in Law in broadly defined and could potentially be invoked in lieu of pre-cessation triggers. However, Change in Law provisions are rarely if even invoked, so the efficacy of these provisions being used to manage this risk is uncertain.

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

While early "opt-in" triggers would allow for increased flexibility and would likely reduce operational risk, they have the potential to cause misalignment between the syndicated loan and derivative hedge, given the fact that timing for moving to the new reference rate may differ. If this risk can be effectively managed, then early opt-in triggers would be appropriate to include. We understand that the FRBNY has indicated that early opt-in is desirable and in the interest of the stability of the financial system, and TD supports this view if basis risk can be managed.

3(b): If you do believe that an opt-in trigger should be included, do you prefer the approach in the hardwired proposal or the amendment proposal?

TD prefers the approach in the hardwire proposal. We believe that the early opt-in trigger under the amendment approach does not provide enough concrete guidance to Administrative Agents as to when an early opt-in trigger has occurred. TD would also support the hardwire approach requiring more than "at least two currently outstanding syndicated loans in the US" priced over Term SOFR, given than two loans is a low bar and may not be representative of the direction of the syndicated loan market.

4): Are there any other trigger events that you believe should be included for consideration?

TD does not currently have a view as to other trigger events.

5): If the ARRC has recommended a forward-looking term rate, should the rate be the primary fallback for syndicated loans referencing LIBOR even though derivatives are expected to reference overnight versions of SOFR?

Yes, forward-looking term SOFR should be the primary fallback for syndicated loans, if this rate is available. TD is uncertain as to how the rate can develop without being supported by a term SOFR derivatives market, which if developed should minimize basis risk. However, we recognize the developments in current CME trading in the SOFR futures market and support continued development in this area. Even if a derivatives market is not developed to support a forward-looking term SOFR rate, we still believe it is appropriate for this rate to be the primary fallback given that it is preferable from a client perspective and the industry can choose the hedge with non-derivative products. TD recognizes that hedging with non-derivatives may have additional costs.

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 option do you support and why?

TD would support option (ii) if the calculation method is transparent and well documented. We believe that this should minimize the possibility of manipulation by, or litigation risk to, the Administrative Agent. If interpolation is predominantly based on Administrative Agent discretion and/or there is no industry approved methodology, this leaves open the possibility of manipulation, thus increasing the risk of liability for the Agent. In this scenario, TD would support option (i).

7): Should Compound SOFR be the second step in the waterfall? Would this preference be influenced by whether ISDA implements fallbacks referencing compounded SOFR or overnight SOFR?

TD would be supportive of Compounded SOFR being the second step in the waterfall, provided it is based on a compounded average daily SOFR over the relevant period as opposed to a compounded spot SOFR rate (which is subject to greater risk of volatility, so any temporary spikes or dips would otherwise be magnified through compounding). Operational risks are higher with using the compounding methodology used in the ISDA definition of USD-SOFR COMPOUND in that current systems do not support such automated calculations, although TD expects to be able to resolve such challenges by the time a trigger event occurs. Otherwise, this option may only be feasible if it were a published rate.

8): If you believe that Compounded SOFR should be included, would a Compound SOFR in advance or in arrears be preferable for syndicated loans?

There are difficulties with answering this question given that there is no precedent for Compound SOFR, however our initial view is a preference for "in arrears". This would be consistent with how OIS swaps and Standby Fees are calculated. Calculating in advance would seem manufactured given that it would not necessarily be reflective of the rate and would likely create basis risk with derivative hedges. That being said, we recognize that borrower acceptance is questionable when using "in arrears" as the rate would not be known at the beginning of the period.

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 hardwire approach defaults to a streamlined amendment process)? Would this preference be influenced by whether ISDA implement fallbacks referencing compounded SOFR or overnight SOFR?

Overnight SOFR is preferable to defaulting to a streamlined amendment process at this stage in the waterfall, however it is only reasonable to use Overnight SOFR on a short-term basis. It is TD's understanding that Overnight Spot would only be triggered in the event that Compound SOFR is unavailable. We are of the view that Overnight SOFR on a short-term basis allows for the Compound SOFR market to correct and once more become viable before needing to revert to the amendment process.

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?

As mentioned above, TD is of the view that Overnight SOFR is only appropriate for use on a short-term basis. We believe lenders would refuse to provide loans lasting three months if priced over one Overnight SOFR observation.

11): Any other replacement rate that should be added to the hardwired approach waterfall before moving to the amendment process? If so, what is the appropriate rate or rates and at which stage in the waterfall should they be applied?

TD does not currently have a view as to other replacement rates that should be added to the hardwired approach waterfall before moving to the amendment process.

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

Yes. TD strongly supports an ARRC endorsed rate and/or calculation methodology. We believe this would minimize litigation risk and improve transparency throughout the market.

13): Is a spread adjustment applicable to fallbacks for derivatives under the ISDA definitions appropriate as the second priority in the spread waterfall when the Unadjusted Replacement Rate is equivalent to the ISDA fallback rate?

Yes, this would make sense from an operational perspective.

14): Is there any other spread adjustment that should be added to the hardwired approach spread waterfall before parties move to the streamlined amendment approach? If so, what is the appropriate spread and at which stage in the waterfall should it be applied?

TD does not currently have a view as to other spread adjustments that should be included in the hardwired approach spread waterfall.

15(a): Under the amendment approach, if parties are selecting a replacement rate through the amendment process, should the objection of Required Lenders be by class (if applicable)? Why or why not?

Yes, TD supports objection of Required Lenders be by class. This would be particularly beneficial to revolver banks that are in the minority relative to institutional TLB lenders.

15(b): Under the amendment approach, 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)? Is affirmative consent appropriate or should negative consent be considered instead?

Yes, as above, TD supports affirmation being by class. TD also supports negative consent as we believe this would be more operationally efficient. It would be cumbersome as Agent to need to follow up with all Required Lenders for affirmative consent.

16(a): Under the hardwire approach, if parties must fallback to selecting a replacement rate through the amendment process because none of the options in the waterfall are available, is the object of the Required Lenders by a class appropriate?

Yes, same as 15(a).

16(b): the hardwired approach proposal provides two brackets options for a successful declaration of the "opt-in" amendment process- Required Lenders (majority) vs. Supermajority of Lenders (2/3rd lenders). What should be the standard affirmative lender voting threshold for consenting to the opt-in?

TD supports a simple majority declaration of Required Lenders via negative consent.

17): For respondents that act as Administrative Agents in the syndicated business loan market, would your institution be will to (i) work with the borrower to identify a new reference rate or spread adjustment, (ii) determine whether trigger 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 amendment to allow the Administrative Agent to appropriately administer the replacement benchmark?

(i) When acting as Administrative Agent, TD currently works with borrowers and lenders when making adjustments to credit agreements and will continue to do so to identify a new reference rate or spread adjustment.

(ii) TD does not support the Agent acting alone in determining when a trigger occurs, unless this trigger is consistent with ISDA cessation triggers; all other triggers would require consultation with Lenders.

(iii) TD currently selects screen rates where reference rates are to be found.

(iv) TD would do this if the loan agreement allows for this, however we are concerned about any relationship pressure that may arise from the borrower in cases where we interpolate the rate. As discussed above, this is why we support the development of a standardized industry methodology for interpolation and would require strong indemnification language to cover this circumstance.

18): Is it necessary that any replacement and/or applicable spread adjustment be published on a screen by a third party? Why or why not?

Yes, this is necessary. It would mitigate the risk to the Administrative Agent.

19: Given that market practices and conventions may change over time, should the Administrative Agent's limit ability to make conforming changes be available only at the point of transition or on a periodic, ongoing basis? Why or why not?

We support the Administrative Agent being able to make conforming changes on a periodic, ongoing basis. Currently, we are required to exercise professional judgment on an ongoing basis and we do not believe this ability should be restricted.

20: How important is it for the fallback rate to be available prior to making a borrowing/ advancing funds? For instances, if the rate was a compounded three-month rate calculated at the end of the interest period, would this be problematic? Please explain.

This is not important as our loan booking systems are designed to accept the rate if applied at the end of the interest period. However, as noted above, we are uncertain as to whether borrowers will accept calculation in arrears.

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

Yes, we have concerns given current system capabilities.

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

We do not see any other concerns related to fallback language from an operational perspective.

23. **What modifications to the syndicated loan consultative language may be helpful to market participants as they consider more robust fall language in a bilateral or single bank business loan context, if any? What modifications a to the language may be appropriate in instances in which bilateral loan is fully or partially hedged?**

TD supports having fallback language in bilateral loans that is inconsistent with that of syndicated loans. For the reasons articulated above, TD supports a hard wire approach for bilateral loans. There are concerns however, that the waterfall and calculation provisions may be overly complex in many bilateral loan situations. One approach might be language that permits the lender to make the SOFR rate and spread calculations consistent market practice and ARRC principles against value transfer.

24: Is there any provision in the proposals that would significantly impede syndicated loan originations? If so, please provide a specific and detailed explanation.

Although we understand the ARRC are working towards developing the rate, the lack of term SOFR is very problematic if syndicated loan banks are advocating for the ARRC proposed evolution of the market. We believe there will be significant client pushback given the fact that they will be asked to sign agreements where we cannot give them a reasonable view of how the new benchmark will perform.

25: Please provide any additional feedback on any aspect of the proposal.

TD does not have any additional feedback to provide at this time.

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TD wishes to reiterate our appreciation to the ARRC Syndicated Loans Working Group for the opportunity to provide feedback on the Syndicated Loans Consultation. We are happy to discuss our responses and to provide any additional information that may be helpful.

Thank-you for your consideration of these important issues to market participants.