

Treasury and IRS colleagues,

As we have discussed, we expect that market participants will seek to make bilateral modifications of derivative contracts to incorporate the terms of the forthcoming ISDA Protocol relating to IBOR discontinuation (the “Protocol”) into their contracts. As previously stated in our comment letter submitted on December 9, 2019 and supplemental submissions on December 20, 2019 and January 30, 2020, the ARRC supports the inclusion of such bilateral contract modifications in the non-regulatory relief that Treasury and the IRS (“Treasury”) are planning to issue relating to the Protocol (the “IRB Guidance”), and also recommends permitting “substantially similar” contract modifications in order to allow individual contracting parties to tailor the terms of the Protocol to their particular documents or scope of transactions.

This email outlines an alternative approach that Treasury could potentially use to allow parties to make limited modifications to their contracts in addition to incorporating the terms of the Protocol, should Treasury not adopt the ARRC’s recommendation to include “substantially similar” contract modifications in the IRB Guidance. We assume as a starting point that the IRB Guidance will apply to (1) the incorporation of the terms of the Protocol or the ARRC fallback provisions, (2) associated alterations or modifications (as defined by reference to Proposed Treasury Regulations Section 1.1001-6(a)(5)) and (3) certain specific examples of deviations from the Protocol or the ARRC fallback provisions, including those provided in our supplemental submissions dated December 20, 2019 and January 30, 2020 (attached for reference).

The IRB Guidance could state that any other contemporaneous alterations or modifications made by the parties would be tested under Treasury Regulations Section 1.1001-1(a) or 1.1001-3, as applicable, for purposes of determining whether such alterations or modifications result in a taxable event with respect to the contract. As in Proposed Treasury Regulation Section 1.1001-6(a)(4), such alterations or modifications could be tested separately under Section 1001 principles from the changes described in categories (1), (2) and (3) above by treating the pre-change contract as including all of the changes made by the parties that are described in those three categories.

We would be happy to discuss this or any other related topic at your convenience.

Sincerely,