Alternative Reference Rate Committee:

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

TD Bank Group ("**TD**") welcomes the opportunity to respond to the ARRC consultation regarding more robust LIBOR fallback contract language for new LIBOR bilateral 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 calculation of effective, non-value transfer spreads to prevent market disruption in the event that LIBOR does not exist or is not viable beyond the end of 2021. In addition, TD appreciates the efforts of the ARRC Bilateral Business 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 effect 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 view but may be subject to change as more information becomes available.

Response to Questions:

Question 1. If the ARRC were to adopt one or more sets of bilateral 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?

Overall, TD supports the hardwired 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. Additional we believe the hardwire approach may reduce litigation risk, given the rate and spread determination would 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.

We also note that the industry is currently moving in the direction of the amendment approach given the uncertainty of industry consensus on a fallback rate and spread calculation. Once these factors become more certain, TD believes that the will be a transition towards a hardwired approach.

Question 2. Beyond your response to Question 1, are there product or transaction types, or methods of documenting transactions, for which either of the fallback approaches would be problematic? If so, please explain. What other approach would you suggest?

TD does not see any issues with product or transaction types for adopting either fallback approaches.

Question 3. (a) Should fallback language for bilateral business loans include any of the pre-cessation triggers (triggers 3, 4 or 5)? If so, which ones?

While TD supports pre-cessation triggers and recognizes the value they add from a contractual certainty and operational perspective (particularly in avoiding a zombie LIBOR situation), we would want the language to be a 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 sufficient clear in order to limit discretion, however trigger 5 leaves open the possibility for lenders to interpret certain statements by a regulator in different ways. As an example, lenders could interpret statements already made by the FCA regarding LIBOR as sufficient to meet this trigger.

(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.

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

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 is broadly defined and could potentially be invoked in lieu of pre-cessation triggers. However, Change in Law provisions are rarely, if ever, invoked, so the efficacy of these provisions being used to manage this risk is uncertain.

Question 4. ***(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 bilateral 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.

(b) Do you believe an "opt-in" trigger should be included in both the hardwired and amendment proposals or only in one (please specify which and explain).

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 Lenders 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 that two loans is a low threshold and may not be representative of the direction of the bilateral loan market.

Question 5. Are there any other trigger events that you believe should be included for consideration? If yes, please explain.
TD does not currently have a view as to other trigger events.

Question 6. If the ARRC has recommended a forward-looking term rate, should that rate be the primary fallback for bilateral business loans referencing LIBOR even though derivatives are expected to reference overnight versions of SOFR? Please explain.

Yes, forward-looking term SOFR should be the primary fallback for bilateral 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 to hedge with non-derivative products. TD recognizes that hedging with non-derivatives may have additional costs.

Question 7. Should the Lender be able to eliminate certain interest period options if there are no equivalent SOFR terms available? If so, consider the following options: (i) the Lender may remove all

interest periods for which there is not a published term rate or (ii) the Lender 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?

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 Lender. If interpolation is predominantly based on Lender discretion and/or there is no industry approved methodology, this leaves open the possibility of manipulation, thus increasing the risk of liability for the Lender. In this scenario, TD would support option (i).

Question 8. 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?

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 spokes 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. As an overall comment, TD strongly supports a publicly available approved calculation methodology for Compounded SOFR.

Question 9. If you believe that Compounded SOFR should be included, which compounding period is preferable ("in arrears" or "in advance")? Would this preference be influenced by whether ISDA implements fallbacks referencing compounded SOFR "in arrears" or "in advance"?

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 may be question when using "in arrears" as the rate would not be known at the beginning of the period.

Question 10. As noted, this consultation does not include Overnight SOFR as a final step in the waterfall. Do you believe that Overnight SOFR is an appropriate fallback reference rate for bilateral business 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)?

TD believes that Overnight SOFR would be the preferable final step in the waterfall after Compounded SOFR before defaulting to a streamlined amendment process, 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 Compounded SOFR is unavailable. We are of the view that Overnight SOFR on a short-term basis allows for the Compounded SOFR market to correct and once more become viable before needing to revert to the amendment process.

Question 11. Is there any other 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? Please explain.

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.

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

Question 13. Is a spread adjustment applicable to fallbacks for derivatives under the ISDA definitions appropriate as the second priority in the hardwired approach spread waterfall even if bilateral business loans may fall back at a different time or to a different rate from derivatives? Please explain.

Yes, this would make sense from an operational perspective

Question 14. 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?

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

Question 15. For respondents that act as Lenders in the bilateral 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 LIBOR or term SOFR if there is a missing middle maturity, and (v) execute one-time or periodic technical or operational amendments to appropriately administer the replacement benchmark? Please respond to each and explain.

(i) When acting as Lender, TD currently makes adjustment to loan agreements and will continue to do so to identify a new reference rate or spread adjustment.
(ii) TD supports the Lender in determining when a trigger event occurs and is willing to make this determination.
(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 TD supports the development of a standardized industry methodology for interpolation and would require strong indemnification language in loan agreements to cover this circumstance.

Question 16. In any of these situations, should the Lender have the right to take the relevant action, for example to designate loan terms unilaterally within the framework of either Appendix I or Appendix II, simply by notice to the Borrower? Alternatively, should the lender have the right to take such action, subject only to the Borrower's right to withhold consent? Please explain which approach, or what alternative approach, you think would be better.

TD believes the Lender should have the right to take relevant actions simply by notice to the Borrower. We note there would be a significant administrative burden if borrowers were able to withhold consent. TD supports language requiring the Lender to act consistently with prevailing market conventions and in good faith with the borrower to mitigate against undue value transfer. We believe this would balance the needs of the borrower with operational/ administrative considerations.

Question 17. 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, this is necessary. It would mitigate risk to the Lender.

Question 19. Are there operational concerns about having the ability to convert many loans over a very short period of time? Please explain.

Yes, we have concerns about current system capabilities.

Question 20. Do you see other operational challenges that fallback language should acknowledge or of which the ARRC should be aware? For example, both approaches to fallback language involve various notices from the Lender – do these requirements and the resulting communications between parties impose undue operational burdens? Please explain.

There may be operational challenges with bespoke legacy loan agreement providing different rights to different borrowers. This could result in a requirement for different types/ manner of notices to various clients, which would be a significant administrative burden.

Question 21. If bilateral business loans fall back to a different rate from derivatives, how do market participants expect to handle the interplay of loans and their hedges? Would market participants expect that current swaps would be terminated, and a new swap entered into once the loan has transitioned?

TD is currently reviewing hedging and basis risk issues internally and will revert to ARRC with feedback once we have a view.

Question 22. Would market participants that execute interest rate hedges prefer to fall back to the same rate and spread that becomes operative under the ISDA Definitions even if a term SOFR is available? If so, please provide comments on the proposal for hedged loans set forth in Appendix VI, including a discussion of any operational concerns. Please provide comments on any other approaches you think could be useful in addressing fallbacks in loans and related hedges.

See above.

Question 23. When a loan is only partially hedged, either by a swap that is not coterminous with the loan's maturity or a swap the notional amount of which is less than the loan amount (or the portion of the loan accruing interest based on LIBOR), should a trigger event result in the entire loan balance converting to the fallback benchmark? Would it be operationally practical to align only the hedged portion's terms with the terms of the swap? What other concerns would market participants anticipate in operationalizing dynamic tranching of a partially hedged loan?

See above.

Question 24. Are there any provisions in the fallback language proposals that would significantly impede bilateral business 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 may result in significant client pushback given that they would be asked to sign agreements where we cannot vie them a reasonable view of how the new benchmark will perform.

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

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