Name of Organization:

Contact:

Response to FRN Consultation

Questions about Pre-cessation Triggers

Question 1(a): *Should fallback language for FRNs include any of the pre-cessation triggers (triggers 3, 4 and 5)? If so, which ones?*

It should not.

Question 1(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.*

Concerns relate primarily to the differences between these triggers and those for standard derivatives.

Question 1(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?*

These are inherent risks in a floating rate transaction that were known or should have been known to both the issuer and the investors, so accommodations should not be necessary.

- Regarding a regulator's declaration that LIBOR is not representative of an underlying market -- many would argue that this assessment is true already and that regulators have already (at least informally) acknowledged such, yet FRNs continue to use the LIBOR benchmarks without many materially negative implications.
- Regarding a situation in which there would indefinitely be too few contributors, we suspect that this situation would not persist for long until the administrator would either (i) change the policy to allow for fewer contributors to inform the published rate, or (ii) announce that the relevant IBOR will no longer be published. (The latter seems the more likely outcome.) In the former case no trigger is necessary, and in the latter case, the ISDA 2006 trigger condition would be met, so either way the situation would not persist for very long and as a result should not be very consequential.

Question 2: *If the ARRC has recommended a forward-looking term rate, should that rate be the primary fallback for floating rate notes referencing LIBOR even though derivatives are expected to reference overnight versions of SOFR?*

It should not. Consistency between derivatives and securities markets is paramount.

Question 3(a): *Should Compounded SOFR be the second step in the waterfall? Would this preference be influenced by whether ISDA implements fallbacks referencing compounded SOFR or overnight SOFR?*

It should be the first. Consistency between cash and derivatives markets is paramount.

Question 3(b): *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"?*

We favor "in arrears" as this is more natural and accurate in relation to the relevant accrual period and is consistent with how OIS swaps already work. This preference is influenced by ISDA's adoption and we would also be fine with an "in advance" method provided that it applies consistently between cash and securities markets.

Question 4(a): *Would an overnight rate that remains in effect for the entire interest period be an acceptable option for investors, issuers and agents?*

If pushed, and if consistent across derivatives and securities markets, then yes. However we are not sure what the justification for this would be. It would result in unnecessary volatility as an entire accrual period would be linked to a single overnight observation and there are viable alternatives that do not suffer from this drawback.

Question 4(b): *Should the waterfall include Compounded SOFR (step 2) and spot SOFR (step 3) and/or a simple average of SOFR (not in the waterfall at this time)? If only one of these options is included, which is preferable? Would this preference be influenced by whether ISDA implements fallbacks referencing compounded SOFR or overnight SOFR?*

Compounded SOFR is our clear preference. The key criteria is, once again, consistency between derivatives and securities markets. We do not see any reason to use a simple average of SOFR since it is less accurate than a compounding method and does not remove the primary disadvantage of a compounding method in arrears (that payments are not known in advance).

Question 5: *In the future circumstance where there is no SOFR-based fallback rate, is the replacement rate determined by the Relevant Governmental Body the best alternative at this level of the waterfall?*

It should be that which is set forth in the ISDA definitions.

Question 6(a): *In the future circumstance where there is no SOFR-based fallback rate and the Relevant Governmental Body has not recommended a replacement rate for FRNs, is the fallback for SOFR-linked derivatives set forth in the ISDA definitions the best alternative at this level of the waterfall?*

Yes

Question 6(b): *Should this step in the waterfall refer expressly to OBFR and then the FOMC Target Rate rather than refer to the fallback rate for SOFR-linked derivatives in the ISDA definitions (which could change in the future)?*

It should just refer to the ISDA definitions.

Question 7: *Should the issuer or its designee have the ability to over-ride the ISDA fallback for SOFR-linked derivatives in the ISDA definitions at this level of the waterfall if it determines that another rate that is an industry-accepted successor rate for FRNs exists at such time?*

Absolutely not.

Question 8: *Do you believe that the ARRC should consider recommending a spread adjustment that could apply to cash products, including FRNs?*

A spread adjustment is absolutely needed; however it seems that the ISDA spread adjustment method could be utilized. This would have the benefit of consistency across derivatives and securities markets.

Question 9: *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 it is appropriate. Since we are recommending that additional pre-cessation triggers not be included, the spreads should be the same for derivatives and securities markets.

Question 10: *If the ARRC does not recommend a spread adjustment, should the issuer (or its designee) have the ability to determine the spread adjustment (or, if step 2 is applicable, over-ride the spread adjustment for derivatives fallbacks in the ISDA definitions) and select a spread adjustment that would result in a rate that is an industry-accepted successor rate in floating rate notes at such time?*

Provided the language clarifies that the methodology should be commercially reasonable and the result should be whatever is the most widely-used and industry-accepted successor rate for FRNs at the time, we think this is probably OK. However, forcing the Unadjusted Replacement Rate to be the ISDA Fallback Rate would eliminate the need for this.

Question 11: *Whether as issuer or as calculation agent, would your institution be willing to (i) determine whether the proposed triggers have occurred, (ii) select screens where reference rates or spreads are to be found, (iii) make calculations of a rate or spread in the absence of published screen rates, (iv) interpolate term SOFR if there is a missing middle maturity and (v) make the decisions in step 6 of the Replacement Benchmark waterfall and step 3 of the Replacement Benchmark Spread waterfall?*

Our institution would generally not be willing to perform these duties.

Question 12: *Is there any provision in the proposal that would significantly impede FRN issuances? If so, please provide a specific and detailed explanation.*

Question 13: *Please provide any additional feedback on any aspect of the proposal.*