February 5, 2019

Via email to the ARRC Secretariat at: arrc@ny.frb.org

Alternative Reference Rates Committee, convened by the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York

Re: ARRC Consultation - New Issuances of LIBOR Securitizations

The Structured Finance Industry Group ("SFIG")[1] appreciates the opportunity to respond to the Consultation ("Consultation") of the Alternative Reference Rates Committee ("ARRC") regarding New Issuances of LIBOR Securitizations.

SFIG's core charge is to support a robust and liquid securitization market, recognizing that securitization is an essential source of funding for the real economy.

SFIG views the Consultation as an important step in the overall process of transitioning globally from LIBOR to new benchmarks representing market-based risk-free rates. The Consultation seeks commentary on the fallback provisions contained in the Consultation and asks specific questions relating to such provisions ("Questions"). The Consultation seeks commentary from all market participants.

As you know, SFIG is a member of ARRC and also serves as co-chair of the ARRC Securitization Working Group ("SWG"), which produced the Consultation. In an independent effort, we convened our LIBOR Task Force in early 2018 to identify potential best practices that SFIG members in particular believed would help ensure an as-seamless-as-possible transition away from LIBOR to successor benchmarks. The SFIG LIBOR Task Force includes a broad cross-section of SFIG members from all of our constituency groups, including, among others, banks, issuers, investors, trustees, rating agencies, and servicers.

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[1] SFIG is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFIG provides an inclusive network for securitization professionals to collaborate and, as industry leaders, to drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. Members of SFIG represent all sectors of the securitization market, including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers, and trustees. Further information can be found at www.sfindustry.org.

On December 14, 2018, this Task Force published our First Edition Green Paper, entitled "A Set of Recommended Best Practices for LIBOR Benchmark Transition" (the "SFIG Green Paper") which sets forth SFIG members' initial views on how structured finance market participants may navigate this significant transition, including recommended trigger events, a fallback benchmark rate waterfall, and calculation methodologies for replacement reference rates and spreads.[2] While the ultimate goal is to align wherever possible the recommendations of the various industry groups, the collective views of our members expressed through our LIBOR Task Force differ in some respects from the recommendations of the SWG. As such, our responses to the Questions are informed by SFIG members' views as expressed in the SFIG Green Paper.

Submitted below are SFIG's responses ("Responses") to each of the Questions. For your convenience, the Responses have been placed in the order in which the Questions were presented, and the text of each Question is presented in italics before the associated Response. Capitalized terms that are used in this letter, unless otherwise defined, have the meanings set forth in the Consultation.

Question 1: *Which securitization asset classes are you referring to in your response to this consultation if limited to only certain asset classes? If there are particular features of these asset classes that shape your responses to the questions in this survey, please describe them to the extent possible.*

Response to Question 1: Our response to this Consultation relates to all asset classes.

Question 2: *The ISDA triggers contemplate a permanent cessation of LIBOR as of a date certain which may be announced in advance (the "Cessation Date"), at which point the transition from LIBOR to SOFR would occur. As there may be operational challenges for securitizations as both assets and liabilities will have to be transitioned, some have asked for the ability to transition in advance of the Cessation Date in order to address any operational issues that may arise. Specifically, the Designated Transaction Representative (as defined in Appendix I) will have the ability to pick one date within a 30-day period prior to the Cessation Date to facilitate an orderly transition. Do you feel the inclusion of this ability to transfer prior to the Cessation Date is needed? If so, please explain the specific, critical and tangible needs that support its inclusion?*

Response to Question 2: At the time of publication, the SFIG Green Paper included a similar proviso to address operational concerns of certain sponsors. However, following further discussions with our members, we believe that such an operational proviso is adequately addressed by the inclusion of the Asset Replacement Percentage ("ARP") trigger. Previously, certain SFIG members had indicated that the ability to align the transition of the reference rate used on the assets and securities would allay certain operational concerns regarding updates to IT infrastructure as well as investor reporting needed to handle separate reference rates in a single interest accrual period. Similarly, certain SFIG members noted that in transactions backed by

[2] The SFIG Green Paper may be found at: http://www.sfindustry.org/news/sfig-publishes-libor-green-paper.

LIBOR-based floating rate assets where the sponsor also has some control over the reference rate used with respect to the underlying assets, such sponsors would be able to coordinate the transition of both the assets and securities to a successor reference rate, which would allow for minimization or elimination of basis rate risk. However, we have concluded that the ARP trigger provides a similar solution to these problems.

Furthermore, if the operational trigger is to be included, we note that as this option provides for discretion as to when the trigger is hit, the use of the operational proviso should likely be determined by the party that has a need to switch on a certain date (e.g., out of certain operational concerns) rather than a third party service provider.

Question 3(a): *Should fallback language for Securitizations include any of the pre-cessation triggers (clauses (3), (4), (5) and (6) of the Benchmark Discontinuance Event definition)? If so, which ones? Also, please identify any pre-cessation triggers that you do not believe should be utilized for a particular securitization product and explain why.*

Response to Question 3(a): SFIG believes that it may be appropriate for each of these pre-cessation triggers to be included in securitization transactions. However, please see our response to Question 3(c) below regarding considerations of the appropriateness of the inclusion of the ARP trigger in a specific transaction.

Question 3(b): *Please indicate whether any concerns you have about these pre-cessation triggers relate to the differences between these securitization triggers and those for standard derivatives or whether your concerns relate specifically to the pre-cessation triggers themselves.*

Response to Question 3(b): As indicated above (and with respect to the ARP trigger, as discussed below), we are generally in favor of the inclusion of each of the pre-cessation triggers. SFIG membership has indicated that the triggers and fallback language currently contemplated by ISDA may contain significant differences to those contemplated by the ARRC (or contained in the SFIG Green Paper). However, SFIG membership has indicated that some differences between these triggers and the triggers for standard derivatives could be acceptable depending on the circumstances. In particular, we note that there are significant reasons why cash transactions may include different triggers than standard derivatives, including, but not limited to, the fact that the fallback provisions governing the underlying assets in a securitization may not be the same as those included in standard derivatives. Additionally, we note that it is possible that parties to a specific derivative contract used to hedge a securitization can provide that the triggers for the derivative align with those in the securitization. This could be done by the parties to the derivative contract adopting non-standard terms with respect to the triggers and fallback provisions that would align with the securitization. To the extent that a transaction includes a hedge, deal parties could also align the triggers and replacement rates for the transaction to those included in the hedge so that there is not a mismatch between the two. Ideally, at a future point ISDA would provide alternative provisions for fallback and trigger language in derivatives that would line up with the proposals for cash products developed by ARRC and other industry

groups (including SFIG), for use by parties to a derivative contract used to hedge a securitization at their option.

Question 3(c): *If you believe that the pre-cessation trigger in clause (6) (Asset Replacement Percentage) should not be retained, please note any specific concerns leading to this conclusion. If you believe that it should be retained, are there any changes you believe should be made to this trigger? Please explain.*

Response to Question 3(c): We believe that market participants should consider the intent and implications of the ARP trigger prior to inclusion in a transaction. This trigger is intended for use in transactions where assets are LIBOR-based and may transition to a SOFR benchmark, resulting in a need to concurrently transition LIBOR-linked securities to a SOFR benchmark. In transactions with floating rate assets that are either (i) initially pegged to a reference rate other than LIBOR or (ii) anticipated to transition to a reference rate other than SOFR, parties should consider the appropriateness of including the ARP trigger. Further, parties should consider the applicability of such a trigger in the case of a transaction where some, but not all, of the securities are tied to LIBOR. Additionally, as drafted, the ARP trigger applies whenever the ARP is greater than 50%. For transactions with non-static pools of assets, it may be useful to clarify that the ARP trigger only applies the first time the ARP is greater than 50%. This would avoid the situation where the Benchmark changes multiple times in relatively quick succession due to the shifting nature of the pool.

Question 3(d): *If you believe the pre-cessation trigger in clause (6) (Asset Replacement Percentage) should be retained, how would you address concerns that it could result in a transfer of value in a transaction where the Designated Transaction Representative has the ability to change the benchmark used on the underlying assets and, as a result, determine the timing of this pre-cessation trigger? Are there other changes that should be made to the Asset Replacement Percentage trigger? Note that this trigger relates to a mismatch between the securities and the Securitization assets that results from changes in the assets. A mismatch may also arise from a change in the securities due to a trigger event under these fallback provisions. Any concerns with the latter scenario can be addressed in responses to Question 16.*

Response to Question 3(d): Generally, please see our response to Question 3(c) above regarding the appropriateness of the inclusion of the ARP in a specific transaction. To the extent transaction parties are concerned about possible value transfer due to one party having the ability to effect the change of the benchmark on both the assets and securities, there are a few possible ways to address such concerns. First, the actual level of the ARP which would trigger a Benchmark Discontinuance Event could be adjusted. Using a percentage less than 50% would likely result in the Benchmark Discontinuance Event occurring earlier, while, alternatively, a percentage greater than 50% might delay the applicability of the ARP trigger. Additionally, as noted above, it may be useful to clarify that the ARP trigger only applies the first time the ARP is greater than 50% (or such other percentage as identified in the transaction documents). Together, these changes may limit possible value transfer.

Question 3(e): *If pre-cessation triggers are not included, are there options available to market participants to manage the potential risks involved in continuing to reference a Benchmark in the circumstances contemplated by each of these pre-cessation triggers?*

Response to Question 3(e):): Other than the caveats discussed above with respect to the appropriateness of the inclusion of the ARP trigger, we are generally in favor of the inclusion of each of the pre-cessation triggers.

Question 4: *Should the proposed securitization fallback language permit the Designated Transaction Representative to transition the securities after a trigger has occurred but before the Benchmark Replacement Date? Should any limitations be placed on its use? Should there be a limited date range (e.g., 60 days) prior to the Benchmark Replacement Date in which this could be used? Should the Designated Transaction Representative be limited in the circumstances under which it could elect to utilize the additional time? If so, what standard should be utilized to assess whether the additional time is necessary? In each case, please explain why.*

Response to Question 4: Please see our response to Question 2 with respect to the appropriateness and applicability of the operational proviso.

Question 5(a): *If the ARRC has recommended a forward-looking term rate, should that rate be the primary fallback for the securities referencing LIBOR even though derivatives are expected to reference overnight versions of SOFR? Please explain why.*

Response to Question 5(a): SFIG strongly supports the use of a forward-looking term SOFR in the event of a transition away from LIBOR, as modified to reflect the difference between the SOFR risk-free rate and the credit component included in LIBOR. We think that such a rate would provide for as smooth of a transition away from LIBOR as possible. This is true regardless of the fact that derivatives may reference overnight SOFR or a compounded overnight SOFR. LIBOR, as produced today, has several attractive attributes for use in the cash markets, in that it represents: (i) an indication of market participants' expectations about anticipated funding costs over a future accrual period; (ii) a rate that is known at the beginning of the accrual period; and (iii) a rate that is produced using a substantially similar methodology across the various regions that produce IBORs. Ideally, a replacement rate would have each of these features to the greatest extent possible.

A forward-looking term SOFR would be based on market expectations of SOFR over an upcoming accrual period, and would be available at the beginning of the accrual period. For cash markets generally, such a rate is superior to a daily compounded SOFR either set in advance (which would reflect actual funding costs over the preceding accrual period on a lookback basis), or in arrears (which would not be known until the end of the future accrual period).

Although forward-looking term SOFR does not exist today, it is anticipated that such rates will be available ahead of LIBOR cessation, and that these rates will be based on market transactions in derivatives contracts and futures trading that will reference SOFR.

We believe it could be very difficult to convert millions of floating rate consumer and business loans, worth trillions of dollars, from the current market convention of setting interest rates in advance based on forward-looking term rates to compounded overnight risk free rate either in advance or in arrears. Switching from LIBOR to either of these approaches would likely result in borrower confusion and frustration, and, potentially, litigation.

Moreover, there are important drawbacks to the compounded in advance and in arrears approaches that may cause them both to be viewed as unsuitable in the cash markets for most borrowers, with the potential result that no form of SOFR will ultimately be accepted as a new benchmark for certain purposes unless forward-looking term SOFR is made available. The compounding in advance approach is based on backward-looking information, which might not be viewed as acceptable to borrowers, lenders or investors, particularly for longer interest accrual periods, because the rate would be based on stale information over an extended period.

As for the compounding in arrears approach, the rate at which interest accrues will not be known until the end of the interest period. For consumer adjustable-rate mortgage debt today, both the interest rate and the payment amount are established and disclosed at the beginning of each accrual period. If a compounding in arrears approach were used, the rate could increase during the accrual period and any upward spikes in the rate during the accrual period could require either mid-period payment increases or a true-up at the end of the period. Either of these developments could be considered unacceptable features for consumer financial products generally. For consumer adjustable-rate mortgage loans, Regulation Z requires that interest rate changes be disclosed to the borrower before taking effect. More generally for consumer loans, the additional complexity of relying on compounded or averaged daily rates may dissuade consumers from borrowings tied to SOFR. Some corporate borrowers may also object to such features.

In the absence of forward-looking term SOFR, it may develop in the consumer lending markets that LIBOR will be replaced with a different form of forward-looking term benchmark. As an example, these consumer loans could revert to floating rates set by reference to the US Treasury yield curve plus a margin, which is an established lending practice accepted by regulators and readily understood by borrowers.

Furthermore, the lack of a forward-looking term rate would also cause a number of difficulties in the securitization market and the capital markets more broadly. First, fixed rate securities sold in both primary offerings and in the secondary market are priced in some cases by reference to a swaps curve, which is derived from derivatives trading of interest rate swaps. The creation of recognized forward-looking term SOFR would greatly facilitate the growth of derivatives trading that would support a swaps curve based on SOFR, against which securities could be priced. Alternatively, if forward SOFR derivatives trading is not viewed as robust enough to support a forward-looking term SOFR, then market participants may look to a different forward curve for pricing securities. Second, the absence of such forward-looking term rates may create difficulties or increase costs for issuers and sponsors seeking to enter into hedges to offset their obligations

under their respective securitizations. Increased hedging costs may decrease the returns investors ultimately receive on their securities. In the case of consumer assets, any increased costs could also be passed on to consumers.

In the absence of forward-looking term SOFR, it may develop that for purposes of pricing securities the swaps curve derived from LIBOR will be replaced with a different form of forward curve. For example, traders could revert to pricing off the US Treasury yield curve plus an appropriate credit spread.

These are just two reasons why a new benchmark that generates forward-looking term rates and from which a forward term curve can be derived is a critical need in the lending and capital markets. We believe that there is and will be a market demand for such a benchmark. We believe that this perceived need is underscored by the fact that ICE Benchmark Administration is seeking comment on potentially launching its U.S. Dollar ICE Bank Yield Index, which would produce USD forward looking term rates in one-, three- and six-month tenors.

SFIG believes that for the launch of SOFR as a replacement benchmark for LIBOR to realize its highest potential for universal acceptance, it is essential for ARRC to move forward with its paced transition plan culminating in the development forward-looking term SOFR. We, therefore, recommend that the primary fallback for securities referencing LIBOR be forward-looking term SOFR selected, endorsed or recommended as the replacement for LIBOR by the Federal Reserve Board and/or the NY Fed, or by the ARRC.

Question 5(b): *Is there a specific reason that the securitization market should first fall back to forward-looking term SOFR instead of another rate? Please explain why.*

Response to Question 5(b): Please see our response to Question 5(a) above.

Question 5(c): *Is the use of an Interpolated Period appropriate in the securitization markets? Please explain any limitations that should be applied to the use of an Interpolated Period.*

Response to Question 5(c): We support the use of an Interpolated Period. As indicated above, SFIG has a strong preference for a forward-looking term SOFR. To the extent one particular tenor of a term SOFR is not available, but bookending tenors are available, we think interpolating between such next shorter and next longer rates is a better alternative than Compounded SOFR. That said, as discussed in our response to Question 14(a) below, trustees and calculation agents in SFIG's membership have raised concerns regarding interpolation calculations. They have expressed that they are not the appropriate party to perform such interpolation calculations and would instead prefer a party with an economic interest in the transaction be the party to perform such calculations.

Question 5(d): *In the event a Replacement Benchmark is determined other than under Step 1 of the waterfall, should the waterfall provide that the Replacement Benchmark be changed in the future as soon as a rate can be established under Step 1 of the waterfall?*

Response to Question 5(d): As indicated above, SFIG has a strong preference for a term SOFR. Given such preference, we would support limited re-testing to switch to a term SOFR should one become available after an earlier application of the waterfall to the extent the transaction is referencing Compounded SOFR at such time. For a further discussion of the appropriateness of re-testing, please see our response to Question 10(b) below.

Question 6(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?*

Response to Question 6(a): SFIG supports the use of Compounded SOFR as the second step in the waterfall, for so long as forward-looking term SOFR is not available, in light of the advantages of Compounded SOFR over Spot SOFR. Additionally, we do not think this determination should be swayed by the fallbacks chosen by ISDA. The use of Compounded SOFR as opposed to Spot SOFR has the benefit of minimizing the risks of drastic changes in overnight SOFR on the day the rate is set for a particular interest accrual period. If utilized, the Spot SOFR would reference the overnight SOFR rate on a specific day shortly before the start of an interest accrual period and apply that rate to the entire interest accrual period. Interest accrual periods on LIBOR-linked instruments generally are 1, 3, 6 or 12 months. On a day-to-day basis under normal circumstances, Spot SOFR varies more than LIBOR does, and may also have a tendency to spike at or near the last days of a month or quarter. We are, therefore, concerned that Spot SOFR applied to an interest accrual period of 1 month or more would magnify these day-to-day changes and period end spikes over an extended period of time. Additionally, parties should consider whether an average of Spot SOFR may be superior to Compounded SOFR. SFIG members have indicated that averaging calculations may be simpler for parties to perform than compounding.

Question 6(b): *If you believe that Compounded SOFR should be included, which compounding period is preferable ("in arrears" or "in advance")? Please explain why. Would this preference be influenced by whether ISDA implements fallbacks referencing Compounded SOFR "in arrears" or "in advance?" Please explain whether your preference is based on operational concerns in implementing a particular approach or on economic concerns.*

Response to Question 6(b): There are advantages and disadvantages to each of the "in advance" and "in arrears" options, a number of which are discussed below. Parties in a specific transaction should consider these in light of the specifics of their transaction as a single approach may not be appropriate for all transactions. Additionally, to the extent a transaction party is also a party to a related derivative, it may make sense for the transaction documents and derivative to adopt a similar approach on this point.

The setting in advance approach uses an observation period equal to the length of the upcoming interest period, ending immediately prior to the beginning of the upcoming interest period for which the rate will be applied. The major drawback with this approach is that it is based on

backward-looking, stale information. Unlike LIBOR, it would not take into account anticipated changes in market rates during the upcoming period. This approach could be viewed as acceptable over a shorter duration such as a one-month tenor, but might not be viewed as acceptable by market participants for longer interest accrual periods, such as 3, 6 or 12 months. In a declining rate environment, issuers would be disfavored; in a rising rate environment, investors would be disfavored. For transactions with long tenors these effects may or may not offset each other over time, but, nevertheless, for any given accrual period the index would be based on stale information

The setting in arrears approach uses an observation period which is coterminous with the interest period for which the rate is to be applied (likely subject to a short lock-out period before the end of the interest period so that the calculation can be performed). In terms of accurately reflecting the benchmark during the interest period, some market participants might prefer this approach as it would smooth out the day-to-day fluctuations in the benchmark as well as period end spikes. Rather than prospectively taking into account anticipated changes in market rates during the interest accrual period, this rate would retroactively take into account actual changes in market rates during the interest accrual period by reason of its period-end calculation. The major drawback with this approach is that the rate at which interest accrues in an interest period will not be known until the end of the interest period. This approach may require substantial operational changes arising from the fact that neither issuers nor any other transaction parties would know the exact interest rate or payment amount due until the end of the interest period. Additionally, the in arrears approach may introduce some complications to the trading of bonds in the secondary market between payment dates. It is standard practice for the purchaser to pay accrued interest through the settlement date. Depending on the implementation of rate setting in arrears for a particular transaction, as of the trade date of such trade, the interest to accrue between the trade date and the settlement date might not be known. This could be remediated by incorporating a brief lookback period into the compounding in arrears methodology, or by employing a post settlement date adjustment.

Question 6(c): *If it was necessary to calculate Compounded SOFR and a third party was not available to perform those calculations, are there parties to the Securitization transactions with sufficient resources to perform those calculations accurately and efficiently? Are there other considerations relating to the calculation of Compound SOFR that would make it an undesirable Replacement Benchmark without the availability of a third party provider?*

Response to Question 6(c): As discussed above, certain SFIG members have indicated that an average of overnight SOFR may be simpler to calculate than Compounded SOFR. As such, transaction parties may be more willing to calculate such an average SOFR than Compounded SOFR in the event a third party was not available to do so. That said, as further discussed in our response to Question 14(a), certain SFIG members have observed that to the extent a calculation agent (in such capacity) is requested to agree to perform any of the calculations in connection with a Replacement Benchmark, such calculation agent may be reluctant to do so unless (i) such calculations are void of any discretion on the part of the calculation agent and (ii) such

calculations are explicitly described in the transaction documents so that all market participants would be able to agree upon the required calculations.

Question 7: *As noted, this consultation does not include Spot SOFR as a third step in the waterfall. Do you believe that Spot SOFR is an appropriate fallback reference rate for Securitization contracts or should the second step in the replacement rate waterfall be Compounded SOFR , after which the replacement rate would be, first, recommended by the Relevant Governmental Body, second, default to then-current ISDA Definitions, and third, proposed by the Designated Transaction Representative?*

Response to Question 7: As noted above in our response to Question 6(a), under normal circumstances, SOFR varies on a day-to-day basis more than LIBOR does, and SOFR may also have a tendency to spike at or near the last days of a month or quarter. As such, if the fallback provisions were to include Spot SOFR as the third step in the waterfall, in the scenario where Spot SOFR has not been available for the entire period necessary to calculate Compounded SOFR but a Spot SOFR is available, the deal would be subject to the risk of a spike in SOFR on such date. Even including the possibility of such spikes, however, Spot SOFR may be a better alternative to the following steps in the waterfall given that steps (3) through (5) are not currently determinable. However, one alternative to moving directly to Spot SOFR if Compounded SOFR is unavailable may be to use average values of SOFR over a brief period (e.g., 1 week or 1 month) immediately prior to the applicable interest period. This would work to smooth out spikes in the values of Spot SOFR while still providing a benchmark based on relatively current information. Similarly, another alternative that would attempt to minimize the impact of any spikes in Spot SOFR would be to modify step (2) of the waterfall to provide that in the event Spot SOFR was not available for the entire period corresponding to the Relevant Tenor or Interpolated Period that is necessary to calculate Compounded SOFR (or, as discussed above, an average of Spot SOFR), to then move to an average of Spot SOFR for a specified shorter period. For example, if a transaction was referencing 3MO LIBOR and Spot SOFR was not available for the entire three month period needed to calculate Compounded SOFR (or an average of Spot SOFR), step (2) of the waterfall could then look to see if Spot SOFR values are available for a shorter period (e.g. one week or month), and if so, to use the averaged values over such shorter period.

Question 8: *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? Please explain why.*

Response to Question 8: SFIG agrees that in the event no SOFR-based fallback rate is available, the rate as determined by the Relevant Governmental Body is the best alternative. As evidenced by the current actions taken by the ARRC, we believe if such a scenario was required to develop a successor to SOFR, ARRC or another similar committee would work to identify a successor rate that would be appropriate for securitizations.

Question 9: *In the future circumstance where there is no SOFR-based fallback rate and the Relevant Governmental Body has not recommended a replacement rate for Securitizations, is the fallback for SOFR-linked derivatives set forth in the ISDA definitions at the time of cessation the best alternative at this level of the waterfall? Is this fallback appropriate if ISDA Definitions only include overnight fallback rates? Please explain why.*

Response to Question 9: SFIG also agrees that in the event no SOFR-based fallback rate is available and the Relevant Governmental Body has not recommended a replacement rate, the rate as determined by ISDA as the fallback for SOFR-linked derivatives is the best alternative. While the ISDA fallbacks will not be determined with securitizations in mind, we believe there is a benefit to looking to fallback provisions that will be applicable to a large body of transactions. Additionally, to the extent the securitized assets adopt similar fallback provisions, this would minimize possible mismatches between the securitized assets and securities. However, SFIG does have concerns that the ISDA fallback provisions will only point to an overnight rate or a compounded rate. For the reasons noted above, SFIG's strong preference is for any successor rate to be a forward-looking term rate.

In addition, parties should note that the implementation of changes to the reference rate may also require certain additional administrative and/or ministerial amendments in order to properly effect such reference rate change. For instance, to the extent the ISDA fallback provisions do not allow for the relevant rate to be determined several days in advance of the applicable payment date, changes to the transaction documents may be required to implement the use of the ISDA fallback provisions.

Question 10(a): *Since it is unlikely that there will be no ISDA fallback (clause (a) above), this provision is more likely to occur (if at all) when the ISDA fallback is deemed not appropriate for securitization securities (clause (b) above). In that scenario, is this provision appropriate as the final step in the Replacement Benchmark waterfall? Please explain why.*

Response to Question 10(a): SFIG agrees that there is a benefit to the flexibility added by the Proposed Replacement Benchmark mechanics. Importantly, to the extent the ISDA fallback language is determined to be not an industry-accepted successor rate for securitizations, it would be beneficial for then-existing transactions to transition to the rate that the securitization market has coalesced around at that time. That said, while we believe that there are positive aspects to the Proposed Replacement Benchmark and re-testing mechanics set forth in the Consultation, we also feel that these must be weighed against the additional complexity that such mechanics will impose on transactions.

First, the procedures regarding the Designated Transaction Representative's proposal of a successor rate and the use of the Interim Benchmark are rather complicated. Second, the proposed mechanics allow for the possibility of three separate reference rates being used for a single transaction in quick succession. It may be operationally difficult for deal parties to address such possibility, or to clearly illustrate these processes in any relevant reports delivered to investors. Third, there may be mismatches between the rates used on the assets and securities

during these times, and such mismatches may vary significantly if multiple rates are used in quick succession. Such mismatch may create significant difficulties for issuers and sponsors regarding cash management. To the extent the Proposed Replacement Benchmark procedures could be simplified and/or streamlined to address some of these concerns, we think such changes could be beneficial to the securitization market. As an example, given that it is unlikely that there will be no published ISDA fallback, SFIG's proposed fallback provisions at this step as published in the SFIG Green Paper do not account for the possibility (clause (a)) of no ISDA fallback existing.

Furthermore, we agree that there is a benefit to providing transaction parties with different options regarding the procedures for what level of noteholder involvement is required for any such amendments to the reference rate at this step in the waterfall. Although the approach set forth in the SFIG Green Paper regarding the ability for a designated transaction party to propose an alternate benchmark is slightly different than the procedures set forth in the Consultation, both sets of procedures allow for transaction parties to decide what level of noteholder approval is appropriate. The SFIG Green Paper provides that following the selection of the ISDA-selected fallback, the sponsor may propose an amendment to move to another benchmark. Further, the SFIG Green Paper allows transaction parties to choose from three separate levels of noteholder involvement that would be required for the amendment to become effective. The first option requires affirmative consent of requisite noteholders (as specified in the transaction documents) before entering into the amendment. The second provides that the transaction parties may enter into such amendment unless, following adequate notice, requisite noteholders (as specified in the transaction documents) formally object to such proposal. The final option, which we note is not present in the Consultation, provides that noteholder approval is not required and does not give noteholders any right to consent or to object to such amendment. Given the differences in the level of investor participation across asset classes, we think it is beneficial to allow for transaction parties to specifically tailor the level of noteholder involvement required to enter into these amendments.

Question 10(b): *Should the provision allow for "re-testing" the waterfall to determine whether another Replacement Benchmark has become available in the scenario where investors have rejected the Proposed Replacement Benchmark? Should the waterfall be re-tested in any other circumstances (e.g., any time the Replacement Benchmark has been determined under a "less-desirable" clause)? How often? Please explain why.*

Response to Question 10(b): As noted above, SFIG believes there is a benefit to re-testing the waterfall, but only in very limited circumstances. As provided in the SFIG Green Paper, we support a full re-running of the fallback waterfall on successive determination dates only in the event that no replacement rate has been selected by application of the waterfall. Additionally, as mentioned above, we also assume that there will always be ISDA-designated fallback language.

Also, given that we have a strong preference for a forward-looking term rate as a successor rate and that overnight SOFR is currently being published, we think the most likely scenario in which re-testing will be beneficial is when at the time of a Benchmark Discontinuance Event a forward-

looking term SOFR is not yet available but overnight SOFR is continuing to be published. In such a scenario, the successor rate would be Compounded SOFR. Given the efforts currently being made to develop a term curve for SOFR, it seems likely that term rates will at some point become available. If such term rates become available, it would be beneficial for a transaction then relying on Compounded SOFR to switch to the applicable forward-looking term SOFR. For that reason, in the SFIG Green Paper, we support a limited re-testing mechanic that would look to move from either compounded or averaged SOFR or from Spot SOFR to forward-looking term SOFR. In consideration of the added complexity that this would cause, SFIG's proposal would have this retesting done on the first day of each calendar quarter. This would allow for the re-testing to be performed by market participants at the same times each year for all of their transactions. We suggest that the ARRC also consider such changes to the proposed fallback provisions. Furthermore, as noted in our response to Question 6(b), to the extent a transaction party is also a party to a related derivative, it may make sense for the transaction documents and derivative to adopt a similar approach on re-testing.

Question 11: *Are there any concerns if a spread adjustment was utilized with cash products that was calculated by a spot rate comparison of the difference between LIBOR and the Replacement Base Rate at the time of conversion? Should this option be included in the spread waterfall? If so, where?*

Response to Question 11: Relying on the difference in spot rates to determine the spread adjustment creates a number of potential issues. As discussed below, each of these issues could result in such spread adjustment failing to reflect the differences between LIBOR and the Replacement Rate over a longer period and, furthermore, any variances in the spread during that time period from historical norms would be magnified by applying that spread over the remaining term of the transaction. First, the spread adjustment should ideally reflect the historical difference between LIBOR and the Replacement Base Rate. Such historical difference would not be indicated by looking solely at the difference in spot rates as of a particular date. Second, as discussed in our response to Question 6(a) above, as compared to LIBOR, SOFR may also have a tendency to spike at or near the last days of a month or quarter. As a result, any transition during such time using a spot spread adjustment could result in a spread adjustment that does not accurately reflect the historical differences between the two rates. Third, during the time either near the time of the end of LIBOR's publication, including the time between the announcement of the cessation of publication of LIBOR rates and ultimate cessation, LIBOR rates may perform differently than they might have otherwise. As a result, the spot spread at such time may not be indicative of the historical difference between LIBOR and the successor rate.

For these reasons, it is SFIG's strong preference that the spread adjustment should be calculated by looking at the historic mean or median in such rates over a long period of time. Using the historical mean, rather than historical median, may better take into account any spikes or lows over the calculation lookback period. The longest possible lookback period should be used, depending on the quality, comparability and availability of data. Ideally, at least 10 years would be used. The industry has access to a SOFR proxy going back several years. While SOFR's official publication only began in April 2018, in March 2018 the NY Fed released historical data

based on its Overnight Treasury GC Repo Primary Dealer Survey Rate series that dates to 1998 as an approximate SOFR proxy.

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

Response to Question 12: SFIG strongly supports the ARRC making such recommendation. It would be immensely helpful to the securitization industry as a whole to have an industry-recommended spread adjustment. Without such a recommendation, it may be difficult for transaction parties to come to an agreement as to the appropriate spread adjustment. Additionally, SFIG members have observed that, in the absence of an ARRC recommendation, transaction parties may be reluctant to take responsibility for suggesting an appropriate spread adjustment. Without a recommended or agreed-upon spread adjustment, transaction documents may be left without any spread adjustment at all. Given that SOFR does not contain the credit risk component present in LIBOR, this could result in a value transfer among the transaction parties and/or investors. The earlier official sector spread adjustments are available, the less likely it is that an argument could be made regarding intentional value transfer.

Question 13(a): *Is a spread adjustment applicable to fallbacks for derivatives under the ISDA definitions appropriate as the second priority in the spread waterfall? Please explain why.*

Response to Question 13(a): While we support the approach of relying on an ISDA-selected spread adjustment for certain purposes, we disagree with it being the second step in the spread adjustment waterfall in all cases. To the extent the Replacement Base Rate is one that has been designated by the Relevant Governmental Body, we support the spread adjustment also being selected by such entity. For example, if the Replacement Base Rate was determined pursuant to clause (1) through (3) of the definition of Replacement Benchmark, we strongly support the result that the ARRC (or another successor committee) would designate the appropriate spread adjustment. However, in the event that the Replacement Base Rate is instead one designated by ISDA, the spread adjustment should also be designated by ISDA. This ensures agreement between the Replacement Base Rate and the relevant spread adjustment. On the other hand, if the Replacement Base Rate was determined pursuant to clause (1) through (3) of the definition of Replacement Benchmark, the use of a spread adjustment designated by ISDA will not necessarily be appropriate.

Additionally, similar to the approach taken with respect to a Proposed Replacement Benchmark, SFIG supports the ability of a designated transaction party to designate a different spread adjustment, subject to an investor vote or veto. Such proposed spread adjustment could be designated in the event that either no ARRC or ISDA spread adjustment has been designated, or if the designated party feels that such ARRC or ISDA selected spread is inappropriate in light of the particular transaction. Such an approach would allow for greater flexibility while avoiding any possible mismatch between the new base rate and the spread adjustment. Accordingly, in the SFIG Green Paper, the ability of a designated transaction party to designate a different spread adjustment, subject to an investor vote or veto, is not limited to instances where no ARRC or

ISDA spread adjustment has been designated. We suggest the ARRC consider such an approach to the spread adjustment mechanics.

Question 13(b): *If the ARRC has recommended a forward-looking term SOFR but has not recommended a corresponding spread adjustment under Step 1 above, do you believe that the ISDA spread adjustment described in Step 2 (which may be intended to apply to a different Replacement Base Rate) should apply to Securitizations? Please explain why.*

Response to Question 13(b): As discussed in our response to Question 13(a), in this instance we do not think that the spread adjustment designated by ISDA would be appropriate. For this reason, we also think the ability of a transaction party to propose an alternate spread adjustment is an important change to the spread adjustment mechanics.

Question 13(c): *Given that ISDA has not yet decided upon the spread calculation methodology, should Step 2 be excluded from the waterfall? Please explain why.*

Response to Question 13(c): As discussed in our response to Question 13(a), the addition of the ability of a transaction party to propose an alternate spread adjustment would alleviate the concern that ISDA has not yet published a spread adjustment. SFIG supports having the ISDA designated spread adjustment remain in the fallback language. However, we also believe its applicability should be limited to where the ISDA selected replacement base rate is being used, and we believe it is essential to allow for the possibility of an alternate spread being proposed by transaction parties.

Question 14(a): *What type of institution can and should take on the responsibility 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/or (v) elect to cause an early transition under the proviso to the definition of Benchmark Replacement Date?*

Response to Question 14(a): We believe there will need to be continued discussions in the marketplace regarding the appropriate party to make such determinations and calculations. The SFIG Green Paper leaves these items as open questions. Additionally, however, trustees and calculation agents in SFIG's membership have expressed their views on how the transaction party responsible for monitoring for the occurrence of any triggers or performing any of the relevant calculations shall be determined. They have expressed concerns that trustees (in such capacity) should not be responsible for (i) determining whether a Benchmark Discontinuance Event has occurred, (ii) selecting of a replacement rate, or (iii) performing the calculations required in connection with any replacement rate. Similarly, they have indicated that calculation agents should not be responsible for (i) determining whether a Benchmark Discontinuance Event has occurred or (ii) selecting a replacement rate. Overall, the trustees and calculation agents have indicated that as trustees and calculation agents are merely acting as agents for the parties with economic interests in the transactions, any decisions or actions that could have an economic impact on the deal should instead be taken by one of the parties with economic interests in the

deal. Trustees and calculation agents that are SFIG members have further observed that to the extent a calculation agent (in such capacity) is requested to agree to perform any of the calculations in connection with a replacement rate, such calculation agent may be reluctant to do so unless (i) such calculations are void of any discretion on the part of the calculation agent and (ii) such calculations are explicitly described in the transaction documents so that all market participants would be able to agree upon the required calculations. Absent the appointment of a third party to perform these duties and in the event that no official publication with respect to the occurrence of a trigger, determination of a replacement rate and/or the spread adjustment, etc., has occurred, SFIG believes that the appropriate party to perform such actions and determinations will need to be identified in each transaction pursuant to the agreement of the transaction parties.

Question 14(b): *Whether as issuer, sponsor, servicer or 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/or (v) elect to cause an early transition under the proviso to the definition of Benchmark Replacement Date?*

Response to Question 14: Not applicable.

Question 15: *Is there any provision in the proposal that would significantly impede Securitization issuances? If so, please provide a specific and detailed explanation.*

Response to Question 15: We do not think there are any provisions in the proposed fallback language that would significantly impede securitization issuances.

Question 16: *Given the fallback language for the Securitization and the underlying assets may operate independently, please identify any sources of misalignment between those components that are not addressed in the consultation.*

Response to Question 16: To the extent possible, the fallback language for securitizations backed by floating rate assets should attempt to minimize any mismatch between the rates used by the assets to be included in securitizations and those of the securities issued in such securitizations. However, it is important to note that assets may transition to referencing successor rates other than those identified in the Replacement Benchmark Waterfall. For example, SFIG members have observed that certain LIBOR-based residential mortgage loans may convert to referring an index based on U.S. Treasuries. One possible reason for this is that such an index is currently available and is already accepted by consumers as well as regulators, while a term curve for forward-looking SOFR has yet to develop, and spot or compounded SOFR may be viewed as inappropriate for consumers. Although this consultation is not directly concerned with the fallback provisions applicable to assets that will ultimately be included in

securitizations, SFIG is strongly in favor of aligning the fallback language for such assets to the fallback language to be included in securitizations to the extent possible.

Additionally, depending upon a transaction's structure, it is possible that the issuing entity (or a trustee, administrator or servicer on its behalf) as owner of the assets may have a role in selecting a replacement rate for the underlying assets. It is also possible that investors may have a role in approving a replacement rate. Therefore, depending on the transaction, acceptance and/or approval of the replacement rate is another complexity to be addressed.

Question 17: *Are there specific operational challenges that implementing the proposed fallback language might create for securitizations? If so, what are those challenges and under what circumstances might they occur? How might they be mitigated?*

Response to Question 17: As discussed in our response to question 14(a), we think that the determination of the appropriate party to monitor for triggers, to determine the appropriate replacement rate and any applicable spread adjustment, and to perform any required calculations will be a key issue moving forward. Additionally, all deal parties will need to ensure that they are prepared for the operational mechanics of transitioning to a successor rate.

Question 18: *Please provide any additional feedback on any aspect of the proposal.*

Response to Question 18: Other than as indicated above, we have no additional comments to the proposal.

SFIG appreciates your consideration of these comments and welcomes the opportunity to discuss further. If you have any questions about this matter, please contact Sairah Burki, Head of ABS Policy, at (202) 524-6302 or sairah.burki@sfindustry.org.

Very truly yours,

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