Consultation Response – Syndicated Business Loans

The following pertains to questions 1-3:

Capital One, National Association response:

We believe that if the ARRC were to adopt one or more sets of fallback language, it should include an amendment-based approach, including an opt-in trigger, that would facilitate an orderly transition to a new benchmark rate. We believe that the ARRC should exercise caution in adopting a hardwired approach given existing uncertainties surrounding the demise of LIBOR and the calculation of a successor rate in various circumstances as detailed in the consultation, and to the extent that the amendment (including opt-in) approach are able to produce a more orderly transition to a new benchmark rate.

The following pertains to questions 15(a) and 16(a):

LIBOR FALLBACK PROPOSAL

> Any [amendment replacing LIBOR with an alternate benchmark rate that has been agreed to by the Administrative Agent and the Borrower] … shall become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent shall have posted such proposed amendment to all Lenders… unless, prior to such time, Lenders comprising the Required Lenders [of each Class] have delivered to the Administrative Agent written notice that such Required Lenders do not accept such amendment.

Lender vote

As used in the fallback proposal, a class vote means that for an objection to be valid, each class of loans in the credit agreement (e.g. revolver lenders may be one class, term loan B lenders another class) must object. Class voting can make an objection more difficult because each class must object for the objection to be effective. However, it can also preclude majority lenders from overriding the wishes of minority lenders. For example, in a facility where there is a small revolving loan and a large term loan B tranche, then both classes would have to object for an amendment not to be effective.

ARRC Question. *Under the proposal, if parties are selecting a replacement rate, should the objection of the Required Lenders be by class (if applicable) …? Why or why not?*

Capital One, National Association response:

> We believe that under the proposal, if parties are selecting a replacement rate, it is (on balance) better that the objection of the Required Lenders **not** be by class (if applicable).

Our answer reflects our belief that requiring class voting in these "negative consent" situations potentially skews voting in favor of a lender with a large percentage hold in one class of loan in a credit facility (as is often the case with the Administrative Agent) regardless as to the size of that class in the overall facility. For example, an institution with an outsize position in a small revolving loan might actually or effectively prevent lenders holding the vast majority of exposure under the overall loan facility (revolving and term) from successfully objecting to the selection of a new rate in a negative

consent scenario, *despite the fact that the revolver might potentially be a much smaller piece of the overall loan facility*. Although we recognize that revolving lenders may have concerns that are distinct from those in a term loan, or potentially other loans that comprise a loan facility, we believe that, on balance, it is more equitable to lenders on the whole, for a "negative consent" vote to be carried by the majority of the exposure to the overall facility. Additionally, we believe class voting in this scenario has the potential, in certain circumstances, to result in a form of activism where institutions could acquire a controlling position in one class of debt, which might be much smaller in relation to the overall facility, in order to control the outcome of the negative consent.