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ARRC Recommends LIBOR Termination Language

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The Alternative Reference Rates Committee ("ARRC") recently provided recommended contractual fallback language for U.S. dollar LIBOR-denominated floating rate notes and syndicated loans. Cadwalader served as drafting counsel for the ARRC working groups.

The recommendation, according to the ARRC, addresses risks in contracts that reference LIBOR and builds on the "Paced Transition Plan," which sets forth steps for an efficient shift to the Secured Overnight Financing Rate ("SOFR").

The ARRC's recommended fallback language for floating rate notes "defines the trigger events that start the transition away from LIBOR" and lays out a "waterfall" approach to determine the SOFR-based successor rate and "spread adjustment that would apply to the successor rate."

The ARRC noted that there are two separate alternative fallback language approaches for syndicated loans: the hardwired approach (which follows the trigger event and waterfall patterns of the floating rate notes) and the amendment approach (which has the same trigger events but leaves the selection of the replacement rate to the contract participants).

Incorporating robust LIBOR fallback provisions into new and (if possible) existing contracts is critical for financial market participants, with the end of LIBOR coming into focus over the horizon. The ARRC's publication of final versions of the recommended LIBOR fallback contract language for floating rate notes and syndicated business loans is a meaningful next step in this process. Banking and other institutions will be reviewing the proposed language over the coming weeks and many will be incorporating the language (or modified alternatives) into their standard form floating rate note and syndicated business loan documents. Fallback language for securitization and bilateral business loans are expected in the coming weeks and months.