

ARRC Recommends Additional LIBOR Termination Language

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The Alternative Reference Rates Committee ("ARRC") **recommended** contractual fallback language for U.S. dollar LIBOR-denominated **bilateral business loans** and **securitizations**. These recommendations follow the ARRC's **April 2019 recommended fallback language** for floating rate notes and syndicated loans.

The ARRC's recommended fallback language for *bilateral business loans* is similar to its recommendation for syndicated loans in that it offers both a hardwired and an amendment approach. The hardwired approach includes a "waterfall" for choosing a replacement benchmark and spread adjustment should LIBOR become unusable. The amendment approach includes a "streamlined" mechanism for selecting a replacement benchmark and spread adjustment. Additionally, the fallback language includes an option that recognizes the relationship between loans that implement a replacement benchmark and related hedging arrangements that are used to mitigate risks.

The ARRC's recommended fallback language for *securitizations* lays out a hardwired approach for triggering events and a waterfall for rate determination. Additionally, it addresses challenges concerning the securitization market's asset and liability components.

The ARRC has now published recommended fallback language for all four classes of products on its task list: syndicated business loans, bilateral business loans, floating rate notes and securitizations. Borrowers, lenders, agents, issuers, underwriters, trustees and related parties should consider carefully whether, and in what form, the recommended fallbacks should be included in new issuances of these products. Floating rate notes and syndicated loans that include ARRC fallback language with minor modifications are already coming to market.

LIBOR may be ending as early as the end of 2021, and regulators are continuing to signal that market participants should be treating the transition with all deliberate seriousness. The ARRC and Cadwalader have published a **number of resources** in connection with the recommended fallback language and the upcoming transition process more generally.

Cadwalader served as drafting counsel to the ARRC in connection with the fallback language for all four product classes.

Cadwalader Hosts Inaugural European Fund Finance Review

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The Cadwalader London Fund Finance team's inaugural European Fund Finance Review took place earlier this week. The event was very well received, with over 70 fund finance professionals from across the industry attending the session.

Following a welcome from London managing partner Greg Petrick, Cadwalader partners Sam Hutchinson and Jeremy Cross provided in-depth analysis of the make-up of the fund finance market in Europe and some comparisons with the U.S. fund finance market.

Guest speaker Mark Hindriks of Collier Capital then provided an informative and enjoyable overview of the secondaries market, together with an insight into trends being experienced in private equity.

The session was then rounded off by a further presentation from Jeremy and Sam on best practices in the subscription finance market following recent industry developments. The presentation gave constructive and practical advice for consideration by participants in any future subscription fund financing transaction.

After the talk, guests and speakers enjoyed an evening of networking over drinks and canapés.

The Cadwalader team would like to thank Mark Hindriks and all the attendees for their help and support in making the event such a huge success. We look forward to your attendance at our next European Fund Finance Review, which will be held in January 2020.

Carey Olsen on Security Perfection in the Cayman Islands

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Law firm Carey Olsen this week published *Capital Call Security Perfection in the Cayman Islands—Who, How, What, When and Why*. A concise overview of both the process for and the reasons behind the steps for Cayman security perfection, the article is both a helpful refresher and a good addition to the file library for when those questions inevitably arise. The article is available [here](#).

Private Funds CFO Hits on Fund Borrowing and Performance Reporting

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The *Private Funds CFO* newsletter, a publication of *Private Equity International*, this week touched on fund borrowing in the context of performance reporting. The short write-up follows a discussion at *PEI*'s recent CFOs and COOs Forum at which audience members anecdotally reported some lengthening in facility terms.

While ILPA recommends reporting fund performance on both a gross and ex-facility basis, the article points out that this approach is less straightforward than it sounds. For one, *pro forma* ex-facility reporting would overlook real advantages of a credit line, including the speed to deployment and not calling LP capital for unconsummated investments. As a related point, the ex-facility reporting may be too theoretical to be meaningful. The article is available [here](#). (As an aside, we just can't quite get on board with "levered/unlevered" IRR nomenclature—subscription facilities do not increase fund buying power.)

PEI Reports on Fund Finance Leadership Changes at Investec

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Private Equity International this week reported on Gregg Kantor's departure from his fund finance leadership role in the United States for Investec, as well as Tom Glover's appointment to the role. A copy of the article is available [here](#).

Fund Finance Hiring

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Fund Finance Hiring

Stifel Bank is hiring an Associate to join its new Fund Banking group. For more information, visit the following [link](#) or reach out to Mike Breaux at mbreaux@stifelbank.com.

Fund Finance Calendar

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