

12 July 2019

ISDA
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Dear Sirs,

Consultation on Pre-Cessation Issues for LIBOR and Certain Other Interbank Offered Rates (IBORs)

The Loan Market Association ("LMA") welcomes the opportunity to respond to the above consultation on the preferred approach for addressing pre-cessation issues in ISDA derivatives documentation, published on 16 May 2019 (the "**Consultation Paper**").

The LMA is the trade body for the syndicated loan markets in Europe, the Middle East and Africa ("EMEA"). Its aim is to encourage liquidity in both the primary and secondary loan markets by promoting efficiency and transparency, as well as by developing template documentation and codes of market practice, which are widely used and adopted. Membership of the LMA currently stands at over 700 organisations across EMEA and consists of banks, non-bank investors, law firms, rating agencies and service providers.

We have not replied to each individual question in the Consultation Paper but have highlighted the position in respect of trigger events for the replacement of a screen rate in LMA recommended form facility documentation which you may find helpful. Our member institutions are likely to have other thoughts on the proposals and we have encouraged them to submit their own feedback on the Consultation Paper.

LMA Revised Replacement of Screen Rate Clause

Since November 2014, LMA recommended form facility documentation has included a replacement of screen rate clause to contemplate the discontinuation of a screen rate. The trigger for a replacement screen rate to be chosen (with the consent of the majority lenders and the obligors) is the unavailability of the rate.

Following Andrew Bailey's July 2017 speech on the future of LIBOR, loan market participants considered the need for earlier trigger points for this process to agree on a replacement screen rate. In particular, there were concerns around the LIBOR panels reducing in size (such that the contingency policy was invoked) or the loan market moving away from LIBOR before its cessation (in line with the considerations mentioned in the Consultation Paper in the speech by Edwin Schooling Latter). As a result, in May 2018, the LMA Revised Replacement of Screen

Rate Clause (attached to this letter) was published to provide for further trigger events (amongst other changes). This Clause was produced with support from the Sterling Sub-Group on Benchmark Transition Issues in Syndicated Loan Markets. The Clause is also publicly available on the Bank of England website (acting as Secretariat for the Sterling RFR Working Group).

The full list of trigger events is set out in the definition of "Screen Rate Replacement Event". It is important to note that the Clause provides for an "amendment approach", i.e. the triggers lead to a negotiation between the requisite majority of lenders and the obligors.

In terms of events which could trigger the Clause before cessation, these include:

- the administrator of the screen rate (or its supervisor) announcing that the screen rate may no longer be used;
- that the screen rate is calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements; and
- in the opinion of the [majority lenders] and the obligors, the screen rate is otherwise no longer appropriate for the purposes of calculating interest under the facility agreement.

As can be seen from the above and the attached, the trigger events do not include a pre-cessation trigger in the form of the ARRC fallback language (in that a representativeness trigger is not included. Whilst the first trigger above talks about the screen rate not being able to be used, as noted in the Consultation Paper, a statement of non-representativeness would not in and of itself result in a prohibition on the use of the benchmark under the EU Benchmarks Regulation. However, parties could seek to use the last trigger set out above in this scenario (or the reduced submissions trigger should that be the cause for any non-representativeness statement).

Implications for hedging of cash products

As noted in the Consultation Paper, market participants may wish to apply the same triggers and fallbacks in the relevant cash product and related derivatives to avoid any mismatch occurring. We agree with the importance of market participants considering the wording in their derivatives to match with their cash products. As can be seen from the above and the attached, the triggers in the Clause are broader than cessation triggers or the pre-cessation trigger being consulted on.

Proposal for election re application of pre-cessation trigger

The Consultation Paper includes a proposal allowing adherents to a protocol to elect to exclude certain transactions, only include certain transactions and for a "matching" function in respect of the application of any pre-cessation trigger. This is necessary for those situations where triggers have already been matched to the underlying cash product (the importance of which is noted above).

We would be pleased to discuss any aspect of the above with you in more detail. If we can be of any further assistance, please do not hesitate to contact me by email at clare.dawson@lma.eu.com or on +44 (0)20 7006 6007. We would also be pleased to meet to discuss the above at your convenience.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Clare Dawson". The signature is fluid and cursive, with the first name "Clare" and last name "Dawson" clearly distinguishable.

Clare Dawson
Chief Executive

Attachment: LMA Revised Replacement of Screen Rate Clause (as published on the Bank of England website)

Syndicated loan replacement of screen rate clause

The Working Group on Sterling Risk-Free Reference Rates

Foreword

The overall objective of the Working Group on Sterling Risk-Free Reference Rates (the "Working Group") is to catalyse a broad-based transition to SONIA by end-2021 across sterling bond, loan and derivative markets, in order to reduce the financial stability risks arising from widespread reliance on LIBOR.¹

This document is of relevance to syndicated loan market participants who are continuing to transact new loan contracts referencing LIBOR. Until necessary documentation and infrastructure changes are completed, market participants might reasonably continue to use LIBOR in syndicated loan markets. A key milestone for the Working Group will be communicating best practice for referencing SONIA in syndicated loan markets, planned for later this year.

The clause and the user guide that follow were originally published on the Loan Market Association's (the "LMA") website for members of the LMA. The Working Group has now agreed with the LMA to make this document available more widely given it supports the Working Group's objective of catalysing transition to SONIA.

The intention of the clause is to provide for new syndicated loan contracts to include the facility for discretionary transition, at some point in the future, away from the use of LIBOR and towards alternative reference rates. The sub-group is continuing to work on fallback language that could be applied to loan documents, and the Working Group expects to publish further guidance on this topic in the coming months.

The template clause was drafted for inclusion in the LMA's senior facilities agreement for leveraged acquisition finance transactions (senior/mezzanine) and the LMA's recommended form of syndicated facility agreements. It therefore uses terms defined in those agreements. It can be adapted for use in conjunction with the LMA's other recommended forms of facility agreement but would need to be adapted in an appropriate manner if it were to be used in conjunction with other forms of loan or facility agreement.

The Working Group is very grateful to its Sub-Group on Benchmark Transition Issues in Syndicated Loan markets (the "Sub-Group") for having supported the LMA in its development of updated template language.

François Jourdain, Chair


Frances Hinden, Vice-Chair

Simon Wilkinson, Vice-Chair

Barclays International

Shell International Ltd

Legal & General Investment
Management



The Working Group on Sterling Risk Free Reference Rates

¹ For more information on the Working Group, see <https://www.bankofengland.co.uk/markets/transition-to-sterling-risk-free-rates-from-LIBOR>

Disclaimer

Whilst every effort has been taken in the preparation of the clause that follows (the "Replacement of Screen Rate Clause"), no representation or warranty is given by the LMA, Clifford Chance LLP or any other member of the Working Group or the Sub-Group:

- as to the suitability of the Replacement of Screen Rate Clause for inclusion in agreements which are not based on any of the forms produced by the LMA;*
- as to the suitability of the Replacement of Screen Rate Clause for any particular transaction or purpose;*
- that the Revised Replacement of Screen Rate Clause will cover any eventuality;*
- as to the accuracy or completeness of the contents of the Replacement of Screen Rate Clause;*
- as to the relevance and suitability of the contents of the accompanying user guide (the "Users Guide") for any reader who is not a member of the LMA.*

None of the LMA, Clifford Chance LLP or any other member of the Working Group or the Sub-Group:

- are liable for any losses suffered by any person as a result of any contract incorporating any part of the Replacement of Screen Rate Clause or which may arise from the presence of any errors or omissions in the Replacement of Screen Rate Clause or Users Guide and no proceedings shall be taken by any person in relation to such losses;*
- undertake to maintain the availability of or make available publicly any update to the Replacement of Screen Rate Clause or Users Guide;*
- shall be liable for any losses suffered by any person as a result of any unavailability of the Replacement Screen Rate Clause or the Users Guide at any time and no proceedings shall be taken by any person in relation to such losses.*

For the avoidance of doubt, the Replacement of Screen Rate Clause is in a non-binding recommended form. Its intention is to be used as a starting point for negotiation only. Individual parties are free to depart from its terms and should always satisfy themselves of the regulatory implications of its use.

For the avoidance of doubt, this Users Guide, the Revised Replacement of Screen Rate Clause, the Primary Documents and the Leveraged Document are in a non-binding, recommended form. Their intention is to be used as a starting point for negotiation only. Individual parties are free to depart from their terms and should always satisfy themselves of the regulatory implications of their use.



**THE RECOMMENDED REVISED FORM OF REPLACEMENT SCREEN RATE
CLAUSE AND USERS GUIDE**

16/10/ 2018

The Loan Market Association ("LMA") consents to the use and reproduction of this document for the preparation and documentation of agreements relating to transactions or potential transactions in the loan markets, for training and research purposes and by the Working Group on Sterling Risk Free Reference Rates. The LMA does not consent to the use, reproduction, distribution or communication to the public of this document for any other purpose, in any other manner or by any other person and expressly reserves all other rights. The LMA assumes no responsibility for any use to which the document may be put.

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IMPORTANT NOTICE

- This Users Guide has been prepared for the Loan Market Association ("**LMA**") in connection with the revised recommended form of replacement of screen rate Clause (the "**Revised Replacement of Screen Rate Clause**"). Whilst every care has been taken in the preparation of this Users Guide and the Revised Replacement of Screen Rate Clause, no representation or warranty is given by the LMA or Clifford Chance LLP:
 - as to the suitability of the Revised Replacement of Screen Rate Clause for any particular transaction
 - that the Revised Replacement of Screen Rate Clause will cover any eventuality
 - As to the accuracy or completeness of the contents of this Users Guide.
- The LMA and Clifford Chance LLP are not liable for any losses suffered by any person as a result of any contract incorporating the Revised Replacement of Screen Rate Clause or which may arise from the presence of any errors or omissions in this Users Guide or the Revised Replacement of Screen Rate Clause and no proceedings shall be taken by any person in relation to such losses.
- For the avoidance of doubt, this Users Guide and the Revised Replacement of Screen Rate Clause are in a non-binding, recommended form. Their intention is to be used as a starting point for negotiation only. Individual parties are free to depart from their terms and should always satisfy themselves of the regulatory implications of their use.

INTRODUCTION AND SCOPE

- This Users Guide provides a revised form of drafting of a "replacement of screen rate clause" (the "**Revised Replacement of Screen Rate Clause**") for users of the LMA's senior facilities agreement for leveraged acquisition finance transactions (senior / mezzanine) (the "**Leveraged Document**") and the LMA's recommended form of syndicated facility agreements (the "**Primary Documents**") together with instructions on how to insert the Revised Replacement of Screen Rate Clause into the relevant document. The Revised Replacement of Screen Rate Clause can also be adapted for use in conjunction with the LMA's other recommended forms of facility agreement.
- This Users Guide is divided into the following sections
 - Section 1 contains an overview of the Revised Replacement of Screen Rate Clause.
 - Section 2 contains a form of Revised Replacement of Screen Rate Clause for use in conjunction with the Leveraged Document.
 - Section 3 contains a form of Revised Replacement of Screen Rate Clause for use in conjunction with the Primary Documents.
- The extent to which the Revised Replacement of Screen Rate Clause is or is not included on any specific transaction is a commercial matter for users and is likely to be dependent on the size and composition of the Lender group. **The LMA makes no recommendation as to the extent to which the Revised Replacement of Screen Rate Clause is or is not used on any particular transaction.**

SECTION 1
INTRODUCTION TO THE REVISED REPLACEMENT OF SCREEN RATE
CLAUSE

1. INTRODUCTION

1.1 The Revised Replacement of Screen Rate Clause

- (a) Following the announcement by Andrew Bailey (Chief Executive of the UK's Financial Conduct Authority (the "FCA")) that the FCA will no longer compel or encourage panel banks to provide quotations for the purposes of calculating LIBOR after 2021, it has become possible that LIBOR may cease to be published or that parties may wish to use another benchmark rate in its stead.
- (a) In relation to EURIBOR, this is currently undergoing a process of reform so that it is based on transactions to the extent possible. This is being done with a view to obtaining authorisation under the EU Benchmarks Regulation by 1 January 2020. The European Central Bank and other European regulators are working on proposals for fallbacks to EURIBOR should such authorisation not be achieved.
- (b) Whilst the financial markets are considering potential replacement benchmark rates for LIBOR and EURIBOR, it is difficult to specify drafting for such rates and therefore parties are looking to include additional flexibility to make the process of amending documents at the appropriate time in the future easier.
- (c) Since November 2014, the Primary Documents and the Leveraged Document have included an optional "replacement of screen rate" clause. This clause qualifies the "All Lender matters" clause by providing that if a Screen Rate is unavailable any amendment replacing that Screen Rate may be made with Majority Lender and Obligor consent. The Primary Documents also contain a further optional provision which disenfranchises any Lender that fails to respond within a specified time-frame to a request to such an amendment (the notes to the Leveraged Document also recommend considering including such a provision where the snooze/lose provisions in paragraph (b) of Clause 42.7 (*Excluded Commitments*) are not included).
- (d) In order to facilitate further flexibility than the existing clause allows, the Revised Replacement of Screen Rate Clause was developed in conjunction with members of the LMA and the Association of Corporate Treasurers (including lenders, borrowers and major law firms). The Revised Replacement of Screen Rate Clause permits amendments to be made to documents with a lower consent threshold than may otherwise be required in a wider range of circumstances than the existing clause.

1.2 Slot-in drafting

Given the optional nature of the Revised Replacement of Screen Rate Clause and the potential for further drafting to be generated in due course to facilitate inclusion into the Primary Documents and the Leveraged Document of any replacement or additional benchmark rates, the Revised Replacement of Screen Rate Clause has at

this stage been made available in a freestanding "slot-in" format to allow parties to include it to the extent appropriate.

2. OVERVIEW OF THE REVISED REPLACEMENT OF SCREEN RATE CLAUSE

2.1 Application

- (a) The clause applies where a replacement (or additional) benchmark rate is contemplated and facilitates amendments to be made to incorporate use of that benchmark rate into the documentation.
- (b) Users should consider whether it is appropriate for the provisions of the clause to operate only upon the occurrence of a trigger event – a "Screen Rate Replacement Event". This may depend on the composition of the lending groups.
- (c) Users should further consider the consent level that is appropriate in the context of the lending group. Whilst Majority Lender consent may be appropriate, in some circumstances and given the nature of the amendments which may need a consideration of the pricing implications, a higher threshold may be considered.

2.2 Flexibility

The main purpose of the clause is to provide the Parties with greater flexibility to make amendments with a lower consent level than would otherwise be required. In this respect, it allows amendments to be made to facilitate inclusion of a replacement benchmark which:

- (a) is formally selected as a replacement for LIBOR by the LIBOR administrator or by an appropriate regulator; or
- (b) is otherwise accepted by the relevant markets; or
- (c) is deemed appropriate by the requisite majority of Lenders and the Obligors.

2.3 ISDA/Other markets

- (a) The drafting of the Revised Replacement of Screen Rate Clause is mindful of the ISDA Benchmark Supplement particularly in the definition of "Screen Rate Replacement Event" where trigger events relating to the cessation of a benchmark are set out. However, given the needs of different documentation and markets, the wording is not identical.
- (b) Users should consider the Revised Replacement of Screen Rate Clause in the context of similar provisions for related transactions in other markets and amend as necessary to ensure that they co-exist without inconsistency.

2.4 Costs of amendments

Users may want to consider allocation of responsibility for the costs and expenses relating to any amendment or waiver contemplated by the Revised Replacement of Screen Rate Clause.

SECTION 2
FORM OF REVISED REPLACEMENT OF SCREEN RATE CLAUSE FOR USE IN
CONJUNCTION WITH THE LEVERAGED DOCUMENT

1. INTRODUCTION

This Section contains a form of Revised Replacement of Screen Rate Clause for use in conjunction with the Leveraged Document, and instructions on how to insert the Revised Replacement of Screen Rate Clause into the Leveraged Document.

2. ADDING THE REVISED REPLACEMENT OF SCREEN RATE CLAUSE TO THE LEVERAGED DOCUMENT AND THE LMA INTERCREDITOR

The Revised Replacement of Screen Rate Clause has been drafted so that the provisions are contained in a single clause that can simply be inserted into the Leveraged Document.

2.1 Amendments to Leveraged Document

- (a) Delete Clause 42.5 (*Replacement of Screen Rate*) and substitute with the text overleaf.

42.5 *[Replacement of Screen Rate*²

*Subject to paragraph (a) of Clause 42.4 (Other exceptions)*³, *[if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for a currency which can be selected for a Loan,]*⁴ *any amendment or waiver which relates to:*

- (a) *providing for the use of a Replacement Benchmark [in relation to that currency in place of that⁵ Screen Rate]; and*
- (b)
 - (i) *aligning any provision of any Finance Document to the use of that Replacement Benchmark;*
 - (ii) *enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);*
 - (iii) *implementing market conventions applicable to that Replacement Benchmark;*
 - (iv) *providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or*
 - (v) *adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),*

*may be made with the consent of the Agent (acting on the instructions of the [Majority Lenders]) and the Parent.*⁶

² Users should consider this language in the context of similar provisions for related transactions in other markets (for example, related hedging transactions) and amend as necessary to ensure that they co-exist without inconsistency. In the Leveraged Document, "Screen Rate" is a defined term which sets out, in relation to a relevant benchmark rate e.g. LIBOR, the administrator of the rate and the screen or other public source on which the rate can be found.

³ Clause 42.4 (*Other exceptions*) of the Leveraged Document provides that an amendment or waiver which may affect the rights or obligations of an administrative party (such as the Agent or Arranger) cannot be made without the consent of that party.

⁴ Users should include if it is appropriate that the provisions of this clause operate upon the occurrence of a trigger event.

⁵ Users should consider whether there might be situations in which parties may want flexibility to retain the ability to use either the existing Screen Rate or the Replacement Benchmark on transactions. If this is the case, delete "that" and substitute "(or in addition to) the affected" here.

⁶ Users should include if it is appropriate that the provisions of this clause operate upon the occurrence of a trigger event.

"Relevant Nominating Body" means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

"Replacement Benchmark" means []⁷/[a benchmark rate which is:

- (a) formally designated, nominated or recommended as the replacement for a Screen Rate by:
 - (i) the administrator of that Screen Rate [(provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate)]; or
 - (ii) any Relevant Nominating Body,and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;
- (b) in the opinion of the [Majority Lenders]¹⁰ and the Parent, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or
- (c) in the opinion of the [Majority Lenders]¹¹ and the Parent, an appropriate successor to a Screen Rate.]

["Screen Rate Replacement Event" means, in relation to a Screen Rate:

- (a) the methodology, formula or other means of determining that Screen Rate has[, in the opinion of the [Majority Lenders],¹² and the Parent] materially changed;
- (b)
 - (i)
 - (A) the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or

⁷ Users should insert the consent level that is appropriate in the context of the composition of the lending group ("Majority Lenders" is defined in the Leveraged Document as, in short, Lenders representing [66⅔]% of the total commitments).

⁸ If the snooze/lose concept set out in paragraph (b) of Clause 42.7 (*Excluded Commitments*) of the Leveraged Document is not included consider whether such a concept should apply to this Clause 42.5 (*Replacement of Screen Rate*).

⁹ Insert details of any specified pre-agreed replacement benchmark.

¹⁰ Users should insert the consent level that is appropriate in the context of the composition of the lending group.

¹¹ Users should insert the consent level that is appropriate in the context of the composition of the lending group.

¹² Users should insert the consent level that is appropriate in the context of the composition of the lending group.

(B) *information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,*

provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;

(ii) *the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;*

(iii) *the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or*

(iv) *the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or*

(c) *[the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:*

(i) *the circumstance(s) or event(s) leading to such determination are not (in the opinion of the [Majority Lenders] and the Parent) temporary; or*

(ii) *that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the period opposite that Screen Rate in Schedule [20] (Screen Rate contingency periods)]¹³; [or]*

(d) *[in the opinion of the [Majority Lenders]¹⁴ and the Parent, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.]]*

¹³ Note: the Screen Rate administrators (for LIBOR and EURIBOR) have reduced submissions/fallback policies which could be triggered if fewer than the usually required number of banks contributed submissions for the calculation of the relevant rate. These policies generally prescribe that their use would be published by the administrator either on the relevant screen page or (in the case of LIBOR) as the administrator deems appropriate.

¹⁴ Users should insert the consent level that is appropriate in the context of the composition of the lending group.

- (b) Insert the overleaf Schedule 20 (*Screen Rate contingency periods*) after Schedule 19 (*Form of Incremental Facility Lender Certificate*).

SCHEDULE 20

Screen Rate contingency periods

<i>Screen Rate</i>	<i>Period</i>
<i>LIBOR</i>	<i>[]</i>
<i>EURIBOR</i>	<i>[]</i>

SECTION 3
FORM OF REVISED REPLACEMENT OF SCREEN RATE CLAUSE FOR USE IN
CONJUNCTION WITH THE PRIMARY DOCUMENTS

1. INTRODUCTION

- (a) This Section contains a form of Revised Replacement of Screen Rate Clause for use in conjunction with the Primary Documents, and instructions on how to insert the Revised Replacement of Screen Rate Clause into the Primary Documents.
- (b) References in this Section are to the multicurrency term and revolving facilities agreement issued in July 2017 and all cross references in this Section are to clauses in that agreement. However, the Revised Replacement of Screen Rate Clause can be added to any of the Primary Documents, with appropriate amendments to reflect, for example, whether the relevant agreement contains more than one facility, incorporates an LMA Swingline Facility, incorporates an LMA Letter of Credit Facility or is a single currency or multicurrency facility.

2. ADDING THE REVISED REPLACEMENT OF SCREEN RATE CLAUSE TO THE PRIMARY DOCUMENTS

The Revised Replacement of Screen Rate Clause has been drafted so that the provisions are contained in a single clause that can simply be inserted into the relevant Primary Document.

2.1 Amendments to Primary Document

- (a) Delete Clause 35.4 (*Replacement of Screen Rate*) and substitute with the text overleaf.

35.4 *[Replacement of Screen Rate]*¹⁵

(a) *Subject to Clause 35.3 (Other exceptions)*¹⁶, *[if a Screen Rate Replacement Event has occurred in relation to any Screen Rate for a currency which can be selected for a Loan,]*¹⁷ *any amendment or waiver which relates to:*

(i) *providing for the use of a Replacement Benchmark [in relation to that currency in place of that*¹⁸ *Screen Rate]*¹⁹; and

(ii)

(A) *aligning any provision of any Finance Document to the use of that Replacement Benchmark;*

(B) *enabling that Replacement Benchmark to be used for the calculation of interest under this Agreement (including, without limitation, any consequential changes required to enable that Replacement Benchmark to be used for the purposes of this Agreement);*

(C) *implementing market conventions applicable to that Replacement Benchmark;*

(D) *providing for appropriate fallback (and market disruption) provisions for that Replacement Benchmark; or*

(E) *adjusting the pricing to reduce or eliminate, to the extent reasonably practicable, any transfer of economic value from one Party to another as a result of the application of that Replacement Benchmark (and if any adjustment or method for calculating any adjustment has been formally designated, nominated or recommended by the Relevant Nominating Body, the adjustment shall be determined on the basis of that designation, nomination or recommendation),*

may be made with the consent of the Agent (acting on the instructions of the [Majority Lenders]²⁰) and the Obligors.

¹⁵ Users should consider this language in the context of similar provisions for related transactions in other markets (for example, related hedging transactions) and amend as necessary to ensure that they co-exist without inconsistency. In the Primary Documents, "Screen Rate" is a defined term which sets out, in relation to a relevant benchmark e.g. LIBOR, the administrator of the rate and the screen or other public source on which the rate can be found.

¹⁶ Clause 35.3 (*Other exceptions*) (or equivalent) of the Primary Documents provides that an amendment or waiver which may affect the rights or obligations of an administrative party (such as the Agent or Arranger) cannot be made without the consent of that party.

¹⁷ Users should include if it is appropriate that the provisions of this clause operate upon the occurrence of a trigger event.

¹⁸ Users should consider whether there might be situations in which parties may want flexibility to retain the ability to use either the existing Screen Rate or the Replacement Benchmark on transactions. If this is the case, delete "that" and substitute "(or in addition to) the affected" here.

¹⁹ Users should include if it is appropriate that the provisions of this clause operate upon the occurrence of a trigger event.

(b) *[If any Lender fails to respond to a request for an amendment or waiver described in paragraph (a) above within []²¹ Business Days (or such longer time period in relation to any request which the Company and the Agent may agree) of that request being made:*

(i) *its Commitment(s) shall not be included for the purpose of calculating the Total Commitments under the relevant Facility/ies when ascertaining whether any relevant percentage of Total Commitments has been obtained to approve that request; and*

(ii) *its status as a Lender shall be disregarded for the purpose of ascertaining whether the agreement of any specified group of Lenders has been obtained to approve that request.]]*

"Relevant Nominating Body" means any applicable central bank, regulator or other supervisory authority or a group of them, or any working group or committee sponsored or chaired by, or constituted at the request of, any of them or the Financial Stability Board.

"Replacement Benchmark" means []²²/[a benchmark rate which is:

(a) *formally designated, nominated or recommended as the replacement for a Screen Rate by:*

(i) *the administrator of that Screen Rate [(provided that the market or economic reality that such benchmark rate measures is the same as that measured by that Screen Rate)]; or*

(ii) *any Relevant Nominating Body,*

and if replacements have, at the relevant time, been formally designated, nominated or recommended under both paragraphs, the "Replacement Benchmark" will be the replacement under paragraph (ii) above;

(b) *in the opinion of the [Majority Lenders]²³ and the Obligors, generally accepted in the international or any relevant domestic syndicated loan markets as the appropriate successor to a Screen Rate; or*

(c) *in the opinion of the [Majority Lenders]²⁴ and the Obligors, an appropriate successor to a Screen Rate.]*

["Screen Rate Replacement Event" means, in relation to a Screen Rate:

²⁰ Users should insert the consent level that is appropriate in the context of the composition of the lending group ("Majority Lenders" is defined in the Primary Documents as, in short, Lenders representing [66 $\frac{2}{3}$]% of the total commitments).

²¹ Users should include a time period here that reflects the time which it will take Lenders to consider and respond to the request.

²² Insert details of any specified pre-agreed replacement benchmark.

²³ Users should insert the consent level that is appropriate in the context of the composition of the lending group.

²⁴ Users should insert the consent level that is appropriate in the context of the composition of the lending group.

- (a) *the methodology, formula or other means of determining that Screen Rate has[, in the opinion of the [Majority Lenders],²⁵ and the Obligors] materially changed;*
- (b)
 - (i)
 - (A) *the administrator of that Screen Rate or its supervisor publicly announces that such administrator is insolvent; or*
 - (B) *information is published in any order, decree, notice, petition or filing, however described, of or filed with a court, tribunal, exchange, regulatory authority or similar administrative, regulatory or judicial body which reasonably confirms that the administrator of that Screen Rate is insolvent,*

provided that, in each case, at that time, there is no successor administrator to continue to provide that Screen Rate;
 - (ii) *the administrator of that Screen Rate publicly announces that it has ceased or will cease, to provide that Screen Rate permanently or indefinitely and, at that time, there is no successor administrator to continue to provide that Screen Rate;*
 - (iii) *the supervisor of the administrator of that Screen Rate publicly announces that such Screen Rate has been or will be permanently or indefinitely discontinued; or*
 - (iv) *the administrator of that Screen Rate or its supervisor announces that that Screen Rate may no longer be used; or*
- (c) *[the administrator of that Screen Rate determines that that Screen Rate should be calculated in accordance with its reduced submissions or other contingency or fallback policies or arrangements and either:*
 - (i) *the circumstance(s) or event(s) leading to such determination are not (in the opinion of the [Majority Lenders] and the Obligors) temporary; or*
 - (ii) *that Screen Rate is calculated in accordance with any such policy or arrangement for a period no less than the period opposite that Screen Rate in Schedule [15] (Screen Rate contingency periods)]²⁶; [or]*
- (d) *[in the opinion of the [Majority Lenders]²⁷ and the Obligors, that Screen Rate is otherwise no longer appropriate for the purposes of calculating interest under this Agreement.]]*

²⁵ Users should insert the consent level that is appropriate in the context of the composition of the lending group.

²⁶ Note: the Screen Rate administrators (for LIBOR, EURIBOR and EONIA) have reduced submissions/fallback policies which could be triggered if fewer than the usually required number of banks contributed submissions for the calculation of the relevant rate. These policies generally prescribe that their use would be published by the administrator either on the relevant screen page or (in the case of LIBOR) as the administrator deems appropriate.

²⁷ Users should insert the consent level that is appropriate in the context of the composition of the lending group.

- (b) Insert the overleaf Schedule 15 (*Screen Rate contingency periods*) after Schedule 14 [*(Other Benchmarks)*].

SCHEDULE 15

Screen Rate contingency periods

<i>Screen Rate</i>	<i>Period</i>
<i>LIBOR</i>	[]
<i>EURIBOR</i>	[]
<i>[EONIA</i>	[]
<i>Overnight LIBOR</i>	[] ²⁸

²⁸ Include if the relevant Primary Document includes a Swingline Facility