



28.10.2021

First draft NIBOR fallback provisions for floating rate bonds and certificates

By way of this notice, Nordic Trustee presents the first draft NIBOR fallback provisions (the “**Fallback Provisions**”) enclosed as a schedule hereto for possible incorporation in the various bond templates, maintained by Nordic Trustee, in respect of the clauses applicable for floating rate bonds and certificates.

This draft comes as a direct response to the recommended market conventions for Nowa and fallback solutions in the event of a cessation of NIBOR laid out in a report (“**Report**”) from the working group of alternative reference rates for the Norwegian Krone (“**ARR Group**”), dated December 2020 (the “**Recommendation**”)¹

The Fallback Provisions are more or less directly based on the Recommendation. Users are encouraged to read the Report and its references to further literature on the subject. As a note, understanding the mechanics of the Fallback Provisions may prove difficult without any background knowledge on the subject. As a further development of the Fallback Provisions, it is possible that references to formulas and calculation methods instead can be written as references to data provided by a specific service vendor. This could simplify wording and reduce potential sources of error.

¹ <https://www.norges-bank.no/tema/markeder-likviditet/arbeidsgruppe-arr/>

Further, we note that the mandate of the ARR Group includes to recommend an alternative reference rate that “must satisfy the provision in EU Regulation 2016/1011 on financial benchmarks, and generally comply with the international standards for financial benchmarks”. Nordic Trustee is not making any representations as to whether the Fallback Provision does satisfy this condition, which is subject to further examination by the relevant market participants.

While adapted to the generally short style of the Norwegian bond templates, the Fallback Provisions to a great extent follows the ISDA method, which is often referred to as a “hardwired fallback”. Under current bond templates, Nordic Trustee is powered to set the reference rate under a potential cessation of NIBOR. Under a possible move to a hardwired fallback, the flexibility is reduced as the method of response to a potential NIBOR cessation is pre-agreed. For the sake of good order, we therefore mention that alternatives to hardwired fallbacks exist.

On a term sheet level, the Fallback Provision can be summarised as follows;

Conventions	Fallback Provisions
Day count	Actual days divided by 365
Forward or backward looking	Backward looking
Compounded or simple average	Compounded average
Days shift	[5] banking days
Method used	Shifted observation
Precision	5 decimals

Evident from above, the Fallback Provisions are backward looking which is fundamentally different from the forward-looking nature of NIBOR.

An important question therefore revolves around the number of “Days shift”. For practical purposes, the number of Days shift is the number of business days between the quotation of the coupon for the relevant interest period and the interest payment date (“**IPD**”).

The ARR Group recommended 2 Days shift. Applying this convention would leave the bond issuer, bond paying agent and the VPS payment system with 2 business days to perform the whole interest payment operation. In contrast to the current NIBOR based system, where the coupon is set 2 days prior to the start of the interest period, and the bond coupon is consequently known for a period of more than 3 months prior to the IPD (under a 3 Months NIBOR structured bond).

To allow more time between the coupon fixing and the IPD, cash markets may adapt more than 2 Days shift. For the Fallback Provisions, we have used the LMA approach by inserting [5] days. It is set in brackets because this factor remains to be set for the Norwegian bond market.

This introduction is by purpose kept short and only highlights some key aspects on the topic. We welcome feedback and comments on the proposed Fallback Provision, especially the Days shift. We believe more work is needed to arrive at a provision that is well adapted and anchored by all market participants.

[For more information and feedback, please contact one of the Nordic Trustee representatives:](#)

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Amendments to the FRN clause for NIBOR:

Means, for FRN:

- a) the Norwegian Interbank Offered Rate, being the rate fixed for a period comparable to the relevant Interest Period published by Global Rate Set Systems (GRSS) on the Interest Quotation Day; or
- b) if the rate under paragraph a) above is not available for the relevant Interest Period;
 - (i) the linear interpolation between the two closest relevant interest periods, and with the same number of decimals, quoted under paragraph a) above;
- c) if the rate under paragraph a) above is temporarily unavailable on the Interest Quotation Date for the relevant Interest Period and no Rate Switch Trigger Event (as defined in Attachment 1 hereto) has occurred:
 - (i) the rate formally recommended for use by the administrator of the Reference Rate or the supervisor which is responsible for supervising the administrator of the Reference Rate, or
 - (ii) if the rate in paragraph (i) is not available, a commercially reasonable alternative for the Reference Rate; or
- d) if the rate under paragraph a) is permanently unavailable on the Interest Quotation Date as a result of a Rate Switch Trigger Event (as defined in Attachment 1 hereto), the Replacement Reference Rate (as defined in Attachment 1 hereto) will replace the Reference Rate.

Attachment 1

Upon a Rate Switch Trigger Event, the Bond Terms shall with effect from the first Interest Quotation Date after the Rate Switch Trigger Event Date be amended as set out in this Attachment 1.

Except as expressly amended by this Attachment 1, the Bond Terms and the other Finance Documents shall remain in full force and effect.

1. MAIN TERMS OF THE BONDS

Interest Rate:	Means the Replacement Reference Rate plus the Margin.
Original Reference Rate	Means 3 months NIBOR.
Replacement Reference Rate:	Means the percentage rate per annum which is the aggregate of: a) the Compounded RFR Rate; and b) the applicable Credit Adjustment Spread , rounded to fifth decimal place:

2. INTERPRETATION

Compounded RFR Rate:	<p>Means for the Observation Period relating to any Interest Period the percentage rate per annum calculated in accordance with the following formula, and rounded to the fifth decimal place:</p> $\left[\prod_{i=1}^{d_0} \left(1 + \frac{\text{DailyRate}_i \times n_i}{\text{dcc}} \right) - 1 \right] \times \frac{\text{dcc}}{d} \times \frac{\text{Original dcc}}{\text{dcc}}$ <p>where:</p> <p>"d₀" means the number of Business Days in the Observation Period;</p> <p>"i" means a series of whole numbers from one to d₀, each representing the relevant Business Day in chronological order in the Observation Period;</p> <p>"Daily Rate_i" means for any Business Day "i" in the Observation Period, the Daily Rate for that Business Day "i";</p> <p>"n_i" means, for any Business Day "i", the number of calendar days from, and including, that Business Day "i" up to, but excluding, the following Business Day;</p> <p>"dcc" means 365;</p> <p>"Original dcc" means 360; and</p> <p>"d" means the number of calendar days in that Observation Period,</p> <p>whereby the rate per day in the Observation Period shall not be rounded.</p>
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Credit Adjustment Spread:	Means the historical median difference (rounded to the fifth decimal place if necessary) between the Compounded RFR Rate and the Original Reference Rate in the 5-year period to and including the day occurring 2 (two) Business Days immediately prior to the date that is the Tenor period immediately prior to the announcement in accordance with definition of Rate Switch Trigger Event.
Daily Rate:	Means for any Business Day the RFR for that Business Day. If the RFR is (i) not available and (ii) not permanently unavailable for that Business Day, then the Daily Rate for that Business Day will be the last published RFR.
Interest Quotation Date:	Means the last day of the Observation Period for the relevant Interest Period.
Observation Period:	Means the period from and including the day falling [5] Business Days prior to the first day of that Interest Period and ending on, but excluding, the day falling [5] Business Days prior to the last day of that Interest Period.
Rate Switch Trigger Event:	Means: <ul style="list-style-type: none"> a) if the administrator of the Original Reference Rate, its supervisor, the court or any entity with insolvency or resolution authority over the administrator publicly announces that such administrator is insolvent; or b) the administrator or the supervisor of the administrator of the Original Reference Rate publicly announces that it has ceased or will cease to provide the Original Reference Rate for the Interest Period permanently or indefinitely, provided that there is no successor administrator to continue to provide the Original Reference Rate.
Rate Switch Trigger Event Date:	Means in the date on which the Original Reference Rate ceases to be published or otherwise becomes unavailable.
RFR (NOK):	Means: <ul style="list-style-type: none"> a) the Norwegian Overnight Weighted Average (“NOWA”) administered and published by Norges Bank (“NB”); b) if NOWA is permanently unavailable on the Interest Quotation Date; the rate (inclusive of any spreads or adjustments) recommended as the replacement for NOWA by NB (or any successor administrator of NOWA) (the “Recommended Rate”); or c) if the Recommended Rate is permanently unavailable on the Interest Quotation Date; the policy rate as set by NB (inclusive of any spreads or adjustments).
Tenor	3 (three) calendar months

