

CLIENT UPDATE

NYSE EURONEXT TO TAKE OVER LIBOR

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On July 9, 2013, NYSE Euronext was named the winning bidder in the contest to take over the administration of the London Inter-Bank Offered Rate (“LIBOR”). This change has implications for borrowers with floating rate liabilities, such as a term or revolving credit facility, using LIBOR as a reference to determine the applicable interest rate.

BACKGROUND

LIBOR refers to a series of daily interest rate benchmarks, indicating the average rate at which a leading bank can obtain unsecured funding for a given period in a given currency. Historically, the British Bankers’ Association (“BBA”), the trade association for the UK banking sector, has administered the mechanics for determining LIBOR. However, earlier this year, following a scandal in the setting of LIBOR, the UK Government set up an independent advisory committee to recommend a new administrator for LIBOR.

On July 9, 2013, that committee announced that, subject to authorization from the Financial Conduct Authority and following a transition expected to end by early 2014, NYSE Euronext Rate Administration Limited, a NYSE Euronext subsidiary, will take over the administration of LIBOR.

WHAT DOES IT MEAN FOR BORROWERS WITH FLOATING RATE LOANS?

LIBOR is widely used as a key reference for floating rate loans, the typical type of borrowing under term or revolving credit facilities. LIBOR is reset at the beginning of each interest period. Most credit agreements include an elaborate definition of LIBOR which typically

refers to the published BBA rate, with a fallback mechanism that enables the agent bank to determine LIBOR based on quotes received by the agent bank itself or based on rates quoted by the agent bank, if the published BBA rate is no longer ascertainable.

In anticipation of the change in the administration of LIBOR, borrowers may wish to review their credit agreements to determine:

- Whether the LIBOR definition simply refers to the rate administered by the BBA, or is flexible enough to pick up the change in the administration of LIBOR, and thereafter refer to the rate administered by NYSE Euronext.
- Whether the agent bank has the ability to make a determination that the rate administered by NYSE Euronext is a successor to BBA LIBOR and therefore becomes LIBOR under the credit agreement without requiring a formal amendment. In such a case, the form of such a determination should be considered further.
- Whether the credit agreement needs to be amended to change the LIBOR definition. Some agreements permit the borrower and agent bank to make certain corrective changes without soliciting the lender group, a feature that could be useful in this context.

While credit agreements often anticipate a change in the method for publishing the BBA LIBOR, many may not anticipate a change in the administration of the rate itself. In such a case the calculation of LIBOR may fall back to the agent bank's determination based on quotes, which could result in divergence from LIBOR as administered by NYSE Euronext. A credit agreement amendment may therefore be desirable in some cases before the change in the administration of LIBOR becomes effective, which is expected to happen in early 2014. In addition, loan arrangers and agent banks, on their own or through organizations such as the Loan Syndications and Trading Association (LSTA) or Loan Marketing Association (LMA), may develop recommendations for managing the change in administrator.

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Please do not hesitate to contact us with any questions.

July 11, 2013