



2013 Recap: Changes in LIBOR That Could Affect the Agreements Concerning Your Financial Transactions

2013 saw a number of changes to LIBOR, the key interest rate benchmark that is used in a range of financial transactions. These changes have already impacted existing financial transactions, and, almost certainly, will continue to shape future transactions in the year to come.

One of the most obvious changes to LIBOR that impacts financial transactions, and in particular the underlying agreements that memorialize such transactions, is the anticipated change in the administrator of LIBOR from BBA LIBOR Ltd. (“BBALL”), a subsidiary of the British Bankers Association (the “BBA”), to NYSE Euronext Rate Administration Ltd. (“NEURAL”), a new subsidiary of NYSE Euronext. Transfer of the administration of LIBOR was announced in July of 2013, and is expected to be completed in early 2014, once the Financial Conduct Authority’s authorization of NYSE Euronext Rate Administration Ltd. is completed.

As of December 2013, no specific date in 2014 for the transfer from BBALL to NEURAL has been announced, but innumerable agreements will likely be impacted. For example, many loan agreements make specific reference to the BBA and/or Thomson Reuters (which currently compiles LIBOR every day on the BBA’s behalf) in the definition of “LIBOR.” This definition is a key benchmark used within the applicable agreements for purposes of establishing, among other things, the rate of interest payable and other fees and pricing.

Unless the definition of LIBOR in the applicable agreement includes language that contemplates a successor to each of the BBA and Thomson Reuters, such definitions may

cease to serve their intended purpose as of the date the administration of LIBOR is transferred. In this respect, certain industry associations have released suggested revised language to be considered by transactional parties and to be incorporated into their underlying agreements. For example, the Loan Market Association (the “LMA”), an organization that cites as its key objectives improving liquidity, efficiency and transparency in the primary and secondary syndicated loan markets in Europe, the Middle East and Africa, specifically published a series of recommended amendments to the definition of LIBOR, as set forth in its own “LMA Primary Documents.” These recommended amendments specifically involved language that allowed the benchmark to be defined to appropriately reference LIBOR as any rate administered by the BBA, *or its successor*, and that was displayed for the relevant period on the applicable Reuters screen and/or page, *or any replacement screen and/or page*.

2013 also saw the discontinuation of LIBOR for certain currencies and tenors for which it was determined that there was insufficient transactional data to sufficiently corroborate banks’ submissions. In particular, as of the end of May 2013, LIBOR ceased to be compiled and published for 11-, 10-, 9-, 8-, 7-, 5-, 4-month and 2-week LIBOR, and LIBOR ceased to be compiled and published for Australian dollars and Canadian dollars.

As transactional parties prepare for 2014, they should review their existing agreements to determine how the changes to LIBOR impact their existing business deals, and they should

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also consider updating the forms of agreements used in the coming year that they intend to use to memorialize future business deals.

For more advice on financial transactions and LIBOR, contact [Bryan Petkanics](mailto:bpetkanics@loeb.com) at bpetkanics@loeb.com or 212.407.4130 or [John Oberdorf](mailto:joberdorf@loeb.com) at joberdorf@loeb.com or 212.407.4190.

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Loeb & Loeb's Finance Department

CURTIS W. BAJAK	CBAJAK@LOEB.COM	310.282.2024
DANIEL B. BESIKOF	DBESIKOF@LOEB.COM	212.407.4129
MIRIAM L. COHEN	MCOHEN@LOEB.COM	212.407.4103
KEVIN M. EISENBERG	KEISENBERG@LOEB.COM	212.407.4123
KENNETH D. FREEMAN	KFREEMAN@LOEB.COM	212.407.4086
JEFFREY S. FRIED	JFRIED@LOEB.COM	212.407.4987
SCOTT J. GIORDANO	SGIORDANO@LOEB.COM	212.407.4104
WILLIAM M. HAWKINS	WHAWKINS@LOEB.COM	212.407.4126
CAROLYN HUNT	CHUNT@LOEB.COM	310.282.2277
STAN JOHNSON	SJOHNSON@LOEB.COM	212.407.4938
LANCE JURICH	LJURICH@LOEB.COM	310.282.2211
STEVEN M. KORNBLAU	SKORNBLAU@LOEB.COM	212.407.4217
DAVID B. KOSTMAN	DKOSTMAN@LOEB.COM	212.407.4196

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ROBERT B. LACHENAUER	RLACHENAUER@LOEB.COM	212.407.4854
DANIEL A. LARSEN	DLARSEN@LOEB.COM	310.282.2178
ELIZABETH L. MAJERS	EMAJERS@LOEB.COM	312.464.3142
SUSAN V. NOONOO	SNOONOO@LOEB.COM	310.282.2363
JOHN J. OBERDORF, III	JOBERDORF@LOEB.COM	212.407.4190
BRYAN G. PETKANICS	BPETKANICS@LOEB.COM	212.407.4130
ANTHONY PIRRAGLIA	APIRRAGLIA@LOEB.COM	212.407.4146
EMILY RAKOWICZ	ERAKOWICZ@LOEB.COM	212.407.4867
DANA ROSENTHAL	DROSENTHAL@LOEB.COM	212.407.4156
P. GREGORY SCHWED	GSCHWED@LOEB.COM	212.407.4815
PETER G. SEIDEN	PSEIDEN@LOEB.COM	212.407.4070
PAUL W. A. SEVERIN	PSEVERIN@LOEB.COM	310.282.2059
LORETTA THOMPSON	LCTHOMPSON@LOEB.COM	310.282.2331