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New LIBOR Administrator and Credit Documentation

ICE Benchmark Administration Limited (ICE) has assumed responsibility for administering the London Inter Bank Offered Rate (LIBOR) as of February 1, 2014. No longer will the LIBOR benchmark be administered by BBA LIBOR Ltd., a subsidiary of the British Bankers Association (BBA). In order to ensure continuity in the financial markets, ICE has stated that "ICE LIBOR, formerly known as BBA LIBOR, will be a continuation of what was previously known as BBA LIBOR and there shall be no changes to the manner in which the [LIBOR] rate is calculated" or with respect to data collection methodologies.

Background and Administration

The transfer of the administration of LIBOR to ICE emanates from the LIBOR manipulation events that came to light in 2012. The United Kingdom's Chancellor of the Exchequer, in 2012, established the Wheatley Review to review the framework for the setting of LIBOR. This review determined that the current governance and surveillance framework was inadequate to safeguard the integrity of LIBOR. One of the key recommendations from the Wheatley Review was that LIBOR needed to be administered by an independent organization. The Wheatley Review also recommended that the Hogg Tendering Advisory Committee for LIBOR (a United Kingdom advisory group) oversee the selection process for a new LIBOR administrator and make a recommendation on a new administrator for LIBOR. The Hogg Committee selected ICE, a leading provider of financial market infrastructure globally and well positioned to administer LIBOR and restore market confidence in the LIBOR benchmark.

In addition, the United Kingdom's Financial Conduct Authority has extensive new powers to supervise panel banks involved in determining LIBOR, including the ability to take individuals to court for benchmark-related misconduct.

According to ICE, it has introduced new surveillance systems and statistical analysis techniques to provide greater scrutiny of the determination of LIBOR and avoid possible manipulation.

According to ICE, clients can access LIBOR rate information direct from ICE through its Secure File Transfer Protocol (SFTP) service, by daily email distribution or through a third party redistributor listed on their website. The current redistributors include Bloomberg and Thomson Reuters, among others.

Impact on Credit Documentation

Many lenders refer in their credit documentation to LIBOR as administered through BBA. Observers have concluded that because ICE will continue with the same methodology as BBA, the transition to ICE from BBA is not a material change in parties' expectations under existing credit documents (see the "Market Advisory" dated January 29, 2014, issued by the Loan Syndication and Trading Association (LSTA), which offers guidance that LSTA believes a New York court would decide an interpretive question on whether "BBA LIBOR" in a credit agreement would be read as "ICE LIBOR" in favor of such reading).

Nevertheless, in the event that their credit documentation does not discuss a replacement entity for BBA, going forward, lenders should make sure to revise the definitions in their credit documentation (a) to provide that LIBOR should be referenced as administered now by ICE, and (b) to allow for ICE and any other successor to ICE in respect of LIBOR administration.

Should you have any questions, please do not hesitate to contact either Peter Seiden or Bryan Petkanics or any other member of the Loeb & Loeb Finance Department.

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