DarrowEverett LLP
Attorneys & Business Advisors

CLIENT UPDATE:

Changes in LIBOR and the Impact on Loan Documents

What is LIBOR? DarrowEverett's banking and finance clients may be aware, "LIBOR" stands for the London Interbank Offered Rate. LIBOR is a primary benchmark for world-wide interest rates, and is the wholesale rate at which major commercial banks in the London, England market lend money to each other for a specified time period. LIBOR is calculated for seven (7) different maturity periods and for five (5) different currencies. Financial institutions around the world have trillions of dollars of rate exposure inextricably tied to LIBOR, including, without limitation, such as rates for commercial and residential real estate mortgages, other asset-based loans and interest rate swaps.

The administration of LIBOR has traditionally been handled by the British Banker's Association ("BBA"). It has been commonplace for lending institutions around the world, who utilized LIBOR as an index when making and/or pricing loans to borrowers, to refer to LIBOR in their loan documents and other credit instruments (collectively, "Loan Documents") as: "*BBA LIBOR*" and/or "the per annum rate of interest equal to the British Banker's Association LIBOR Rate". Effective February 1, 2014, however, the U.K.'s Financial Conduct Authority ("FCA") turned administration of LIBOR over from the BBA to the Intercontinental Exchange Benchmark Administration Ltd. ("ICE"). ***See Supporting Article I***

While the change in the administration of LIBOR is not likely to produce any material change in the way in which LIBOR is calculated, the change may, however, have a direct impact on our clients' existing Loan Documents (including, in some instances, those Loan Documents which evidence outstanding obligations under existing loan facilities). ***See LIBOR FAQ***

Existing Loan Documents which refer to "BBA LIBOR" as described above may need to be amended. However, to the extent any such existing Loan Documents contain language to account for successors to the BBA (e.g., defining LIBOR as "the London Interbank Offered Rate set by the BBA or any successor thereto"), such Loan Documents may not require any amendment to account for the change from the BBA to ICE. Many Loan Documents refer to "LIBOR as reported by Reuters" because that is where the majority of Lenders actually obtain (and should obtain) LIBOR. Thompson Reuters (and/or its subsidiaries, collectively, "Reuters") has, in recent years, been the official calculator of LIBOR (as opposed to the administrator). Once a day, at around 11:00 a.m. London, England time, Reuters announces LIBOR for various maturity periods and foreign currencies. Notwithstanding the change in the administration of LIBOR from the BBA to ICE, Reuters has obtained approval from the FCA to continue to be the ongoing calculator of LIBOR on behalf of ICE. ***See Supporting Article II***

As a result, existing Loan Documents which refer to "LIBOR as reported by Reuters (or any successor thereto)" should not likely require any amendments. DarrowEverett recommends that its lending and borrowing clients review their Loan Documents (with specific attention to any provisions containing references to LIBOR) to determine if any amendments are needed to account for the change in the administration of LIBOR. Lending clients are advised to consider amending any LIBOR provisions in their Loan Documents to account for: (i) future succession in the administration and/or reporting of LIBOR; (ii) any potential, future changes in the method of calculating LIBOR; and (iii) an alternate means of determining an index rate in the event obtaining LIBOR becomes impossible (and/or temporarily unavailable).

If you would like assistance reviewing and/or amending your Loan Documents, please do not hesitate to contact **Devon A. Kinnard, Esq.** or **Joshua A. Berlinsky, Esq.** in DarrowEverett's Banking & Finance practice group.

Supporting Article I
Supporting Article II
LIBOR FAQ