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Cabinet **News and Views**

Informed analysis for the financial services industry

Summer Slowdown?

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The celebration of July 4th has made this a pretty compressed week for financial regulatory news, especially in the U.S.

So here's a quick summary of what caught our eye. Even with the usual summer slowdown, we can all expect lots more in the weeks to come.

Taking a bit of editorial privilege, I wanted to take a moment in this space to give a heartfelt thank-you to Ron Brandsdorfer for his tireless efforts regarding this newsletter. Ron retired as Cadwalader's Director of Communications at the end of June, but continues to assist us as we transition to his successor. Notwithstanding an Editor who may have pushed (or outright blown through) the envelope on time deadlines to get to press, Ron made us all look good getting this newsletter out each week. All of us in the Financial Services Department wish Ron well on his well-earned retirement.

Daniel Meade
Partner and Editor, *Cabinet News and Views*

Banking Agencies Finalize Interagency Policy Statement on CRE Loan Workouts

By **Daniel Meade**
Partner | Financial Regulation

On June 30, the Federal Reserve Board ("FRB"), Federal Deposit Insurance Corporation ("FDIC"), Office of the Comptroller of the Currency ("OCC") and the National Credit Union Administration ("NCUA") finalized their Policy Statement on Commercial Real Estate Loan Accommodations and Workouts (the "Policy Statement"). The Policy Statement will be effective upon publication in the *Federal Register*.

The Policy Statement is substantially similar to what the agencies proposed last year and supersedes the previous commercial real estate ("CRE") loan workouts from 2009. The Policy Statement "reinforce[s] the message that financial institutions should work prudently and constructively with creditworthy commercial borrowers experiencing financial difficulties, and clarify that such message applies in all stages of the economic cycle…[and] ensure that supervisory policies and actions do not inadvertently curtail the availability of credit to sound borrowers."

This year's Policy Statement includes additional discussion of two topics. First, the Policy Statement included updated discussion in light of the implementation of accounting changes under the Current Expected Credit Loss ("CECL"). The CECL accounting rules phase out the previous treatment of Troubled Debt Restructurings ("TDRs"), and the final Policy Statement reflects those changes. Second, the final Policy Statement added additional guidance on short-term accommodations informed by the experience during the COVID event.

Although the Policy Statement has been in the works for a year, the timing may prove to be prescient as there are some who expect CRE loans to experience some stresses as demand for CRE may have changed after the large-scale working from home or hybrid shift in the workplace.

FCA Announces That USD LIBOR Is Not Representative

By **Lary Stromfeld**
Partner | Financial Regulation

The last publication of USD LIBOR on the basis of panel bank submissions occurred on June 30, 2023. As of July 3, 2023, 1-, 3- and 6-month USD LIBOR settings will be calculated using a synthetic methodology based on CME Term SOFR plus the relevant ISDA fixed spread adjustment. The UK Financial Conduct Authority ("the FCA") announced that "as with other synthetic LIBOR rates, these settings are now permanently unrepresentative of the underlying markets they previously sought to measure." The FCA is the regulator of LIBOR's administrator, ICE Benchmark Administration.

While many legacy LIBOR contracts include fallback language that is triggered when LIBOR "ceases," other contracts include fallback language that is triggered upon a public statement by the regulatory supervisor for LIBOR's administrator announcing that the LIBOR "is no longer representative." Starting in 2019, model fallback language with such a "non-representativeness" trigger has been published by the Alternative Reference Rates Committee ("ARRC") for, among other products, adjustable rate mortgages, bilateral loans, floating rate notes, securitizations, syndicated loans and private student loans.

The FCA announcement also reminded market participants that the synthetic version of LIBOR is intended to cease at end-September 2024 and that all new use of synthetic USD LIBOR is prohibited under the UK Benchmarks Regulation.

The EU and the UK Enter into a Memorandum of Understanding on Regulatory Cooperation

By **Alix Prentice**
Partner | Financial Regulation

In a process that began in December 2020 with a Joint Declaration on Financial Services Regulatory Cooperation, on 27 June 2023 the UK and the EU signed a Memorandum of Understanding establishing a framework for financial services regulatory cooperation between the European Union and the United Kingdom of Great Britain and Northern Ireland ("the MoU").

The MoU sets out four objectives:

1. an exchange of views and analysis on regulatory developments and other issues of common interest;
2. transparency and dialogue on the process of adoption, suspension and withdrawal of equivalence decisions (whereby the EU acknowledges third-country legislation as equivalent);
3. an exchange of views and analysis on market developments and financial stability issues; and
4. enhanced cooperation and coordination.

While it also establishes the Joint EU-UK Financial Regulatory Forum to serve as a platform for cooperation and undertake forward planning, that Forum will not take any regulatory, supervisory or legal decisions nor will it make any equivalence determinations. The MoU establishes a venue and a framework to come together for an exchange of views, and not a decision-making body that can create rights or obligations under international or domestic law.