Spring 2021 | Volume 1.10

THE RISK MANAGEMENT ASSOCIATION
Long Island Chapter

A Message from Our President

As I write this column, April is bringing warmer weather and I am filled with optimism. I hope folks got to spend the Easter and Passover holidays in person with loved ones. WIth COVID-19 vaccine eligibility expanded to those 16 and over, I can envision that we will once again be able to gather in person for one of our feature events. While we will be staying with a virtual approach for our April 23rd Panel Discussion, I remain encouraged that our 2021 / 22 program will return to an in-person format.

I'd like to call everyone's attention to the RMA LI Chapter Scholarship Information and Application Link contained in this edition. With the steadfast and generous support of our Sponsors and Membership, the LI Chapter of the RMA has been able to award well over $25k in scholarships to deserving candidates seeking undergraduate and graduate degrees in business related fields over the past 5-years. As a not-for-profit, giving back to the local community that has been so supportive of us over our history remains a core tenet of our mission. We remain eager to carry that tradition forward again this year. And while the external environment has proven challenging, that has only made this aspect of our mission more critical.

Please help get the word out to those folks in your respective organizations that are pursuing advanced degrees in business. Encourage them to join our Young Professionals Committee as our YP President, Danielle McKenna, so artfully appealed in our last Newsletter. And let's keep building the momentum of the LI Chapter that I've been so proud to be a part of. I can't wait to see everybody soon.

Sincerely;
Michael Heller

OUR SPONSORS

Asset Enhancement Solutions, LLC
Creative Solutions to Financial Challenges

BROWN & ALTMAN, LLP

CERTILMAN BALIN ATTORNEYS

GRASSI
ADVISORS & ACCOUNTANTS

MARCUM
ACCOUNTANTS ADVISORS

mwe
Margolin, Winer & Evens LLP
CERTIFIED PUBLIC ACCOUNTANTS
AND BUSINESS ADVISORS

MEI Middleton Environmental Inc.
Environmental Consultants and Engineers

MH&H Moritt Hock & Hamroff LLP
ATTORNEYS AT LAW

People's United Bank

RIVKIN RADLER

R&T
Rogers & Taylor

Annual Credit Roundtable and Panel Discussion
Date: April 23, 2021
Time: 8:00am – 10:00am
Free | Virtual Only

Speakers:

Zach Mayo
East Coast Regional Manager, Market Executive
City National Bank – Commercial Banking

Daniel Liberty
Sr. Vice President & Commercial Banking Senior Managing Director
Sterling National Bank

Leonard Mortimore
HSBC SVP & Regional Executive
Downstate NY Commercial Banking

Stu Lubow
President & COO
Dime Community Bank

Please join us promptly for 3 virtual networking sessions with our Sponsors
Register

RMA June Event – A Fun Time for All

2021 Scholarship Program

James T. McCarthy Scholarship - $2,500
Dr. Pearl Kamer Scholarship - $2,500
Patrick M. Demery Bankers' Lifetime Achievement Award - $1,500

Application deadline: April 30, 2021

Eligibility:

Bankers and students interested in pursuing their education and career in the area of banking, comercial lending or credit risk management.

You must be enrolled at an accredited college, pursuing a pertinent degree program.

Application package must include the following:

- College transcript and evidence of current enrollment at an accredited college
- Essay from applicant stating:
  - Why you have chosen or are interested in a career in banking
  - Your career goals and how this scholarship will help you meet your goals
- Employment history and current job description, if applicable
- Extracurricular activities, community service
- List of leadership positions, honors and awards
- Letter of recommendation from your current employer or professor

Note: Incomplete application packages will be disqualified.

Applications will be reviewed by the
Scholarship Committee of the
Long Island Chapter of Risk Management Association.

Forward questions or your completed application package to:

Bonnie Dougherty, Senior Vice President
Valley National Bank
BDougherty@valley.com

Join. Engage. Lead

J

New COVID-19-Relief: The American Rescue Plan

Lance Christensen, CPA, Partner &
Debra Oster, CPA, Director
Margolin, Winer & Evens LLP

On March 11, 2021, President Biden signed the American Rescue Plan ("The Act") into law. The Act provides $1.9 trillion of relief and is the third COVID-19 bill signed to help Americans since last March. The Act allocates money for stimulus payments and unemployment benefits, vaccines, schools, small businesses, and more. The following is a summary of the more significant tax provisions.

Key Changes for Individuals
The new law includes the following tax and financial provisions for individuals and families:

Stimulus Payments
Qualified individuals with adjusted gross income (AGI) up to $75,000 and married taxpayers filing a joint return with AGI up to $150,000 will receive $1,400 per person. An additional $1,400 payment will be paid for each dependent.

The stimulus payment phases out for individuals with AGI between $75,000 and $80,000, and couples with AGI between $150,000 and $160,000. The phase-out amounts are based upon 2020 income but if the 2020 return has not yet been filed, 2019 income will be used.

Unemployment Benefits
The enhanced Federal unemployment insurance payment will continue at $300 per week through September 6, 2021. In addition, although unemployment insurance benefits are generally taxable, The Act provides that the first $10,200 in unemployment insurance payments is nontaxable for households with AGI below $150,000. For married taxpayers filing a joint return, the $10,200 exclusion applies to each spouse. The exclusion only applies to the 2020 tax year.

Continued...

Continued...

Child Tax Credit
For tax years beginning in 2021, The Act increases the child tax credit from up to $2,000 per child under the age of 17 to $3,600 for each child younger than 6 and $3,000 for each child age 6 through 17 for qualifying families for one year. The increased credit begins to phase-out at AGI of $75,000 for single taxpayers and $112,500 for married taxpayers filing joint returns. The phase-out only applies to the increased credit amount. Therefore, taxpayers subject to the phase-out will still be eligible for the pre Act credit. The IRS is directed to establish a program to make monthly advance payments equal to 50% of the credit amount beginning in July, 2021.

Child and Dependent Care Credit
For tax years beginning in 2021, eligible expenses have increased from $3,000 per qualifying child to $8,000 per qualifying child.

Key Changes for Businesses
The new law includes some of the following tax-related provisions for businesses and self-employed individuals:

Employment Tax Relief
The employer credit with respect to paid sick and family leave is extended through September 30, 2021. The employee retention credit is extended through December 31, 2021.

Paycheck Protection Program (PPP)
The Act adds $7.25 billion to the Paycheck Protection Program which was recently extended to May 31, 2021.

This loan program will also allow more nonprofits to apply, which includes groups that engage in advocacy and some limited lobbying. Larger nonprofits will also be eligible.

Extension of Limitation on Excess Business Losses-
Noncorporate taxpayers are currently subject to a limit on excess business losses of $250,000 ($500,000 for a married joint-filing couple). These limits are adjusted annually for inflation. Losses that are disallowed under this rule are carried forward to later tax years, then they can be deducted under the rules that apply to net operating losses.

Previously, the CARES Act temporarily suspended the excess business loss rule for losses arising in tax years beginning in 2018 through 2020. This limitation comes back into play for 2021 and was scheduled to expire at the end of 2025. The American Rescue Plan pushes back the expiration date by one year to the end of 2026.

The American Rescue Plan has a number of other provisions. If you have any questions about the legislation and how it may affect you and/or your business, please contact your CPA.

Preparing for a World without LIBOR

DeniseLeMay, Senior Vice President and Manager of Derivative Sales
People's United Bank

Since the 1980s the London Inter-Bank Offered Rate ("LIBOR") has been a key benchmark for a wide range of financial products and today underpins some $200 trillion in financial contracts. But it appears LIBOR's days are numbered, as starting in 2021 its phase-out is scheduled to begin in earnest. This has significant implications for companies that presently have debt tied to LIBOR and those that plan to take on debt indexed to LIBOR in the future. It's a complex transition with a lot left to be decided so, unfortunately, many questions cannot be answered definitively right now. However, the broad outlines of the post-LIBOR landscape are emerging and there are some sensible steps that company executives can take now to prepare for what comes next.

What we know about the LIBOR transition

Let's start with what we know. After the financial crisis, regulators passed numerous banking and money market fund reforms that ended up reducing demand for interbank short-term loans, which is the basis of LIBOR. The decline in loans used to determine the rate reduced the ability of LIBOR to accurately reflect market rates, which sent regulators looking for a new benchmark. Contributing to LIBOR's demise was a scandal that came to light in 2012 in which some global banks manipulated LIBOR to benefit their derivatives traders.

With this as a backdrop, the Federal Reserve Board's Alternative Reference Rates Committee ("ARRC"), led by the Federal Reserve Bank of New York, determined the market needed a replacement rate for LIBOR, one that accurately reflects prevailing market rates and is not susceptible to manipulation. To this end, ARRC voted unanimously in June of 2017 to replace LIBOR with the Secured Overnight Funding Rate ("SOFR") in the United States. SOFR is based on transactions in the Treasury repurchase market, where banks and investors borrow or loan Treasuries overnight.

One of SOFR's major benefits is the depth and robustness of the Treasury repurchase market, with around $800 billion traded daily. SOFR is also based on observable transactions, rather than estimates, which makes it more difficult to manipulate. And since the Treasury repurchase market weathered the global financial crisis, it's believed that SOFR will be reliable in a wide range of market conditions. By April 2019 several institutions had already priced SOFR-linked securities, including Fannie Mae

What we don't know about the LIBOR transition

Now let's consider some of the many things we don't know. Although the current plan is for SOFR to replace LIBOR, we still don't know when a hard switch will occur - also known asthe "cessation date." We also don't know exactly how the index based on SOFR will be calculated. Since SOFR is an overnight rate, ARRC must decide how to calculate longer-dated maturities—one-month, three-month, six-month, 12-month, etc.— so the market can use SOFR as an easy replacement for LIBOR.

Continued...

Moreover, since SOFR is a secured rate and LIBOR unsecured, ARRC expects that SOFR be lower than LIBOR, which means outstanding LIBOR-based loans that fall back to SOFR after the cessation date will require a spread-premium adjustment. At this point we don't know how that premium will be calculated.

For companies that use floating-rate LIBOR loans with swaps to hedge against interest-rate risk, there's the added component of not yet knowing how derivatives (i.e., synthetic interest rates) currently linked to LIBOR will be converted or how future swaps will be calculated when LIBOR is discontinued. The swap market is overseen by the International Swaps & Derivatives Association ("ISDA") and it will make its LIBOR replacement decisions separate from ARRC. Although the two groups work closely together, in fact ISDA is a member of ARRC, there is no guarantee both will arrive at the same conclusion. Ultimately banks need to satisfy borrowers that the underlying LIBOR Index on both their bilateral loans and derivative instruments can match; thus maintaining a perfected hedged transaction that functions efficiently.

What can be done to prepare for LIBOR transition

Even with all these unknowns, there are concrete actions a company can take to prepare, whether it's a small healthcare practice, a regional real estate developer, or a public company. For companies planning new debt issuance or a refinance in the near term, it's important that any loan tied to LIBOR has broad, robust adjustment or replacement language so the loan can convert to a new index when necessary. This is especially important for companies with a corresponding swap transaction. A loan's fallback language needs to align with their derivative fallback language to minimize any operational, legal and basis risk. To help with this AARC released recommended fallback language for different types of loan and debt products including syndicated transactions and bilateral loans earlier this year.

For companies with outstanding LIBOR debt that will extend beyond 2021, it's important they work with their attorneys, treasurers, and bankers to take an inventory of those agreements and examine the contract language to understand which documents will need to be updated when LIBOR phases out. People's United Bank is reviewing loan documents to understand the transition's impact, closely monitoring emerging regulatory guidelines, and has developed LIBOR replacement language that takes ARRC's guidelines into consideration and which we feel is appropriate for all LIBOR-based loan transactions. But currently People's United Bank does not have plans to update previously executed documents with fallback language until more information is available.

The number of unknowns around the transition away from LIBOR can seem overwhelming. But ARRC and banks know that market players need clear guidelines and ample time to prepare for the transition. We believe, therefore, that appropriate guidance will be forthcoming and the transition manageable.

In the meantime, the best course of action is to prepare based on the information we have. For most that means reviewing your contracts now, identify which are tied to LIBOR, and for those contracts assess which terms will need to be amended so you can speedily insert appropriate language into your LIBOR contracts when the timing is appropriate given your own unique circumstances.

Lender Review Of Construction Documents

Kenneth A. Hoffmann, Esq.
Partner in the Banking and Commercial
Lending Practice Group
Certilman Balin Adler & Hyman, LLP

Construction lenders perform substantial due diligence prior to approval of construction project loans. This includes review of zoning variances, building permits, plans, specifications, construction budgets and completion schedules (collectively, the "Project Documents"). Such diligence also includes review of the various construction contracts relating to the project (the "Construction Contracts"). This article summarizes major issues that Lenders and their counsel consider in reviewing Construction Contracts.

The Construction Contracts that Borrower executes with architects, managers and contractors (collectively, the "Contractor Parties") should anticipate the typical conditions and procedures required by most construction lenders. Lender's objective is for the timely, on-budget, lien-free completion of the project and the delivery of a permanent, unconditional certificate of occupancy. To the extent that Borrower or the Contractor Parties stray from the Lender's objective in the Construction Contracts, they can expect comments from the Lender.

The Construction Contracts must conform to the Project Documents, especially in their description of the improvements to be constructed, the budget and the completion schedule. The Lender will often have the assistance of a Construction Consultant who will review the Project Documents and the Construction Contracts and prepare a plan and cost review.

Consultant's plan and cost review should highlight any inconsistencies to the Lender. Significantly, the budget for the entire project should not exceed the sum of the construction loan plus Borrower's equity in the project. In addition, payments to Contractor Parties must comply with the Lender's funding procedures. Generally, loan advances are processed monthly. A requisition specifying the amount to be advanced as a progress payment for the work completed must be certified by the Architect or the Manager. A portion of the payment requested (10%) must be withheld as retainage. The retainage holdback helps to provide incentive for the contractors to complete the project, rather than move on to a more lucrative opportunity. Prior to funding each advance, Lender's Consultant shall inspect the project and confirm that the work has been performed in accordance with the Project Documents. Partial lien waivers shall be delivered by contractors for the payments they will receive. A title continuation confirming no mechanics liens (or other new encumbrances) against the project is provided. Any liens or encumbrances disclosed will need to be satisfied prior to funding. Final payment under the loan (including the release of accrued retainage) will require (in addition to the foregoing) receipt of a certificate of occupancy for the completed improvements.

Continued...

Continued...

Lender will require the Contractor Parties to provide monthly reports to Lender on the status of the project. The Lender is interested in the percentage of project completion, whether the project is on-time and on-budget, changes to the budget or the completion schedule, change orders and the source of funds covering same, the timely delivery of materials for the project and any other issues relating to the project. If any issues are raised, the Lender will likely require cure before making further loan advances.

If the remaining cost to complete the project exceeds the sum of remaining loan proceeds, the Lender may require that the Borrower deposit additional cash to cover the shortfall. Lenders should receive a copy of any notice of default under each Construction Contract, as a Construction Contract default might result in a mechanics' lien or a work stoppage. With prompt notice, Lender will try to deal with these issues immediately to avoid delay and cost overruns.

Lenders typically require that the Project Documents and Construction Contracts be assigned to the Lender as additional collateral for the loan. The Contractor Parties will acknowledge the assignment of the Project Documents and Construction Contracts in a separate document, and agree to cooperate with Lender if required. The executed acknowledgment will also address any provisions of the Construction Contracts that may have to be amended if the Lender exercises it's rights under the assignment. In the event that Borrower defaults under the loan, Lender may enforce its rights under the assignment to complete the project in accordance with the terms of the Project Documents and the Construction Contracts. In any event, the assignment of the Project Documents and Construction Contracts is a critical piece of collateral for any construction lender.

Borrowers and Contractor Parties are sometimes put off by Lender's requirements. However, these issues are usually offset by the advantages of construction loan financing. For the Borrower, most of the funding procedures and other requirements protect both the Borrower and its Lender. For the Contractor Parties, a construction loan provides assurance that they will get paid in a timely manner from a reliable funding source, and that the project will be completed even if the Borrower defaults under the loan.

Kenneth A. Hoffmann is a Partner in the Banking and Commercial Lending Practice Group at Certilman Balin Adler & Hyman, LLP. He represents financial institutions and businesses in the areas of commercial lending, complex real estate transactions and asset-based financings.

2020-21 RMA-LI OFFICERS

PRESIDENT
Michael Heller
Rivkin Radler, LLP

SECRETARY
Neil Seiden
Asset Enhancement Solutions, LLC

TREASURER
Paul Becht
Margolin, Winer & Evens LLP

VICE PRESIDENT
Richard Romano
Valley National Bank

ASSISTANT SECRETARY
Victoria Scolaro
Bank of America, N.A.

ASSISTANT TREASURER
Paul DiTredici
Marcum LLP

2020-21 RMA-LI DIRECTORS

Jennifer Acerra
Citibank, N.A.

Toni Badolato
People's United Bank

Joan Brigante
Retired People's United Bank

Alison Burke
Chase Bank

William Cimbol
TD Bank

Bill Conlan
HSBC Bank USA, N.A.

Peggy Coppola
Santander Bank

Matt Crennan
BNB Bank

Bonnie Dougherty
Valley National Bank

James Goldrick
NYBDC

Marc Hamroff
Moritt Hock & Hamroff LLP

Jeannette Hug
M&T Bank

Sylvia Kachala
Bank of America, N.A.

Michael Kid
Chase Bank

Keith Lawlor
TD Bank

Barbara Liguori
Capital One Bank

Theresa McCarthy
BNB Bank

Robert Milas
Wells Fargo Bank

David Saunders
Asset Enhancement Solutions, LLC

Brian Stone
M&T Bank

ADMINISTRATOR
Danielle Kennedy

RMA YOUNG PROFESSIONALS COMMITTEE OFFICERS

Danielle McKenna
TD Bank

Roger Rose
BNB Bank

Keith Annunziata
Mazars

Brian Boland
Moritt Hock & Hamroff LLP

■ Newsletter Editor: Bill Conlan, HSBC Bank USA, N.A.