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 **TRUIST OUTSIDE COUNSEL WEBSITE BULLETIN**

**Date: February 26, 2021**

**To: All Truist Outside Counsel**

**From: Nick Cook – Truist Legal Department**

**Re: Notice of Revised Truist LIBOR Addendum**

Effective March 1, 2021, new Truist LIBOR addendum form documents will replace the existing LIBOR addendum forms on the Truist Outside Counsel Website. The LIBOR addendum documents that appeared on the Website prior to March 1, 2021 have been retired and should no longer be used for any new or renewal loan transactions documented by counsel representing Truist Bank.

**Overview of the revised Truist LIBOR Addendum**

* The Addendum addresses how a replacement index will be determined when USD LIBOR (the “Benchmark”) ceases as a viable index.
* The Addendum contains a Benchmark Replacement waterfall that includes the following Benchmark Replacement options in the following order: (1) the sum of Term SOFR and the related Benchmark Replacement Adjustment; (2) the sum of Daily Simple SOFR and the related Benchmark Replacement Adjustment or (3) the sum of (a) the alternate benchmark rate that has been selected by the Bank as the replacement for the then-current Benchmark for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement for the then-current Benchmark for U.S. dollar-denominated syndicated or bilateral credit facilities at such time and (b) the related Benchmark Replacement Adjustment.
* Because the Truist Addendum provides the manner for replacement of LIBOR, an amendment will not be required to implement the Benchmark Replacement. Under the terms of the Addendum, the loan documents are deemed amended to provide that the interest rate equals the Benchmark Replacement plus the Margin (after the notice referenced above is provided to the Borrower).

**Replacement of LIBOR under the Truist LIBOR Addendum**

Upon the occurrence of a Benchmark Transition Event (defined in the Addendum and explained below), a Benchmark Replacement will replace LIBOR in accordance the above-referenced Benchmark Replacement waterfall. Truist will provide notice to the Borrower that a Benchmark Transition Event has occurred, the new Benchmark Replacement, and the date on which the interest rate will convert to the Benchmark Replacement as the new index. Any margin/spread (“Margin”) over LIBOR under the terms of the loan will continue after the conversion. Following the conversion, the interest rate will equal the Benchmark Replacement + the Margin.

A Benchmark Transition Event triggers the replacement of LIBOR. In general terms, for a Benchmark Transition Event to occur a governmental type entity must announce that LIBOR is no longer available or representative of

rates. Specifically, the actions that constitute Benchmark Transition Events are: (1) the administrator of LIBOR issues a public statement announcing that it has or will cease to provide LIBOR, and there is no successor administrator; (2) the regulator with authority over the administrator of LIBOR issues a public statement announcing that the administrator has or will cease to provide LIBOR, and there is no successor administrator; or (3) the regulator with authority over the administrator of LIBOR announces that LIBOR is no longer representative.

**Replacement of LIBOR under the Truist Addendum – SWAP Loans**

If the loan is tied to an interest rate swap, the Addendum contains certain provisions that only apply to these loans. For SWAP loans, the timing and replacement rate for LIBOR under the Note will align with and follow the replacement of LIBOR under the related SWAP documentation and the 2006 ISDA Definitions (as opposed to those in the standard bilateral loan documents referenced above). On the effective date established pursuant to the 2006 ISDA Definitions for the replacement of LIBOR in derivative transactions (the Benchmark Replacement Date), the loan documents are deemed amended to replace LIBOR with the replacement index and spread adjustment for LIBOR as determined under the 2006 ISDA Definitions (Benchmark Replacement). Following replacement, the Interest Rate will equal Benchmark Replacement plus the Margin set forth in the Note. This methodology of replacement is designed to ensure that the swap continues to hedge the interest rate risk associated with the loan following replacement in the same manner as it did prior to replacement.

To promote consistency in Truist Bank’s commercial loan documentation, please do not agree to any material amendments to the new LIBOR Addenda forms without first discussing with Truist Bank internal counsel (as identified below). Please note that the LIBOR Addenda on this site are only applicable to commercial loan transactions originated by Truist Bank’s Commercial Community Bank line of business and Private Wealth Management line of business. These forms should not be used in documenting loans originated by Truist Bank’s Corporate and Investment Group or loans originated by any bank subsidiary or affiliate. In addition, please note that the new LIBOR addenda are only intended to be utilized with the applicable Commercial Note form on this website and in connection with documenting transactions that will be booked on the heritage SunTrust Bank commercial loan system.

Finally, please note that to the extent a loan has an interest rate floor, that floor should remain in effect while the loan is a LIBOR based loan as well as after the point in time where the Benchmark Replacement Rate becomes effective. The purpose of the interest rate floor is to ensure that the loan has a minimum interest yield equal to the interest rate floor regardless of the index used in calculating the interest rate. If a floor rate is applicable, it should be expressed as an “all in” rate e.g. If the interest rate floor on a loan is 4% and the margin is 1%, the interest rate floor should be expressed as being 4% as opposed to any of the following: “the interest rate floor is equal to 3% plus the margin” or “the minimum index shall be 3% and the minimum interest rate shall be the minimum index plus 1%” or “the interest rate shall equal the index plus the margin provided, however, that the index shall never be less than 3%.”

Thank you for your attention to this matter. If you have any questions or concerns relating to the information contained in this Memorandum, please reach out to one of the following members of the Commercial Lending Legal Team:

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To ensure that no one team member is overloaded, please contact Nick Cook with respect to Georgia, North Carolina, South Carolina and Virginia transactions, Laura Frick with respect to Alabama, Maryland and Tennessee transactions, Sameer Kapoor with respect to Florida transactions and any member of the team with respect to transactions in any other jurisdiction not expressly referenced. Thank you.