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Independence or Merger? A Board's Most Difficult Decision

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What's Inside:

→ Independence or Merger? A Board's Most Difficult Decision
→ Executive Compensation and Governance Trends for 2021 and Beyond
→ Interest Rate Benchmarks Are Changing: Why Boards Should Care

For most hospital governing boards, the decision whether to remain independent or merge with another healthcare system will be one of their most significant and difficult legacy decisions. The decision can be divisive, threatening, and seen as a failure to maintain a viable community resource. Or the decision potentially can be positive and opportunistic, enabling the hospital to survive into the future. Many boards fear the loss of control, yet this can result in eroding financial sustainability and even insolvency and closure. The Center for Healthcare Quality and Payment Reform (CHQPR) recently estimated that more than 800 rural hospitals are at immediate or high risk of closure in the near future.

By early 2020, Washington Health System (WHS) in southwest Pennsylvania had been approached with merger and affiliation proposals by multiple healthcare systems. The Washington Hospital is the primary hospital within WHS and is positioned in an attractive market situated at the crossroads between three major academic medical centers and five large community hospitals and health systems in surrounding areas. The board embarked on an objective analysis of scenarios to assess if WHS could be financially and operationally capable of achieving its stated vision "to remain a locally governed healthcare system that is a leader in healthcare quality, safety, and value" as an independent healthcare system for the next five to 10 years.

Scenario Analysis: Modeling Impacts for Governance, Finance, Operations, and Clinical Services

The scenario analysis focused on addressing the following questions:

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- What alignment options will allow WHS to achieve its vision to remain an independent health system?
- Which strategic partner(s) could significantly advance WHS's mission and vision, capabilities, and overall market position?
- What are the opportunities and risks associated with the future strategic path for WHS?

The analysis projected how WHS would perform relative to the core competencies that are required for successful performance in a value-based care environment, including leadership and governance, finance, physician alignment, clinical program alignment, quality and safety, care management, operations, and information technology. It also projected:

- WHS's long-term financial runway
- Strategies required to be relevant and sustainable in a value-based care environment
- High-level evaluation of potential strategic partners

➜ Context and Background: Essential Community Providers

Washington Health System comprises two rural hospitals—The Washington Hospital (260 beds) and WHS Greene Hospital (50 beds)—that serve two counties and their surrounding communities southwest of Pittsburgh, Pennsylvania. The system generates $587 million total patient revenue and has more than 2,300 employees and over 40 outpatient sites including a rural health clinic and an employed multi-disciplinary provider practice group, Washington Physician Group (a 70+ provider physician group), with more than 350 hospital medical staff members.

In addition, Washington Health System has diagnostic centers, outpatient care facilities, the Wilfred R. Cameron Wellness Center, Greenbriar Treatment Center (a chemical dependency rehab organization), residency and fellowship programs, the school of nursing, numerous joint ventures in the areas of hospice, senior living, home health, and others to provide patient/family-centered care. It owns a regional ACO/CIN with three similarly sized community health systems as a value-based healthcare organization and is a participant in the Pennsylvania Rural Health Model CMMI pilot program.

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The process allowed WHS to discover what needs and gaps they had that could be fulfilled by a potential partner and identified what capabilities WHS could provide in the relationship to enhance the value of an affiliation agreement.

The Analytic Process

Step 1: Assess WHS's Value-Based Care Readiness

The board steering committee defined core competencies for success in value-based care, and WHS was evaluated using a matrix showing its performance in each of the following eight areas relative to market leaders' current and future capabilities:

- Finance
- Physician alignment
- Information technology
- Clinical program alignment
- Care management
- Leadership and governance
- Quality and safety
- Operations

The central questions being addressed were:

- Will WHS be able to enhance and accelerate its development of these eight competencies over time to remain competitive with other provider networks and hospitals?
- As an independent organization, will WHS be able to keep up with the pace of change and market evolution occurring across the region?

Step 2: Test Strategic Options Against Organizational Objectives

Three strategic alternatives were identified and evaluated against the partnership goals noted above:

- Maintain independence
- Create a new regional system with other independent organizations
- Join an existing regional system/academic medical center

Five test criteria were used to evaluate WHS's options:

- **Test A**: Does the potential option provide WHS with access to capital and the ability to enhance the organization's regional market essentiality with payers and purchasers of healthcare?

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- **Test B**: Does the potential option provide access to a physician infrastructure that will support WHS's care management and clinical objectives and incentivizes cost reduction, quality improvement, and financial sustainability?
- **Test C**: Will the option provide WHS with an advanced business intelligence platform with robust clinical, strategic, operational, and financial analytics?
- **Test D**: Will the option position WHS as a preferred acute provider as part of a broader integrated healthcare delivery network with real-time access to high-performing provider organizations across the continuum of care?
- **Test E**: Does the option provide WHS with a clinically integrated provider workforce with care coordination and care management tools to ensure seamless transitions of care?

Several potential alignment models were considered, including limited-purpose affiliation relationships with other providers to fill specific strategic needs, affiliation with regional hospital(s) and/or systems, integration opportunities with local physician groups, and alternatives identified during the assessment. An evaluation tool was used to judge the merits, benefits, and drawbacks of individual opportunities. Potential partnership objectives for consideration included:

- Mission and vision congruence
- Culture and fit
- Scale
- Market position
- Service distribution
- Geographic expansion
- Physician alignment
- Risk diversification
- Financial capability

Building upon the regional market characteristics and the identified partnership goals and needs, potential partners were profiled on key market, strategic, and financial facts about these organizations. An evaluation matrix was used to summarize the key qualitative and quantitative factors of the strategic alternatives under consideration including an objective assessment of the principal advantages and potential risks associated with each.

Key Finding: All of the options considered had the potential to address a certain component of WHS's core objectives, but no single option would immediately and fully address all the objectives.

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➜ Key Board Takeaways

Conducting a proactive rigorous and objective scenario analysis of potential sustainability will:

- Show that the board is open to objective, quantifiable, evidence-based analysis of potential options available and associated timelines tied to a financial forecast.
- Demonstrate that an objective assessment of partnership options fulfills the board's fiduciary duty to the organization regardless of the emotional impact of considering these scenarios.
- Allow all board members to understand the process, variables, and data modeling essential to provide sufficient information to make an informed and defensible decision about independence and alignment options and strategies.
- Provide the information necessary for the board to assess if the hospital is capable of remaining independent financially and operationally into the future in a sustainable way.

Step 3: Conduct a Financial Analysis

A financial model was used to analyze several scenarios with varied assumptions around projections of future volume, revenues, expenses, and other relevant factors. While WHS enjoys a strong balance sheet, the EBITDA and operating margins were projected to decrease over time as WHS deals with expense inflation and flat to declining revenue, similar to most health systems in the country.

The Results: Many Options, Varied Conclusions

The analysis process was prolonged due to the pandemic and resulted in the WHS board steering committee holding several additional meetings than was originally planned. This allowed for an extraordinarily detailed level of analysis and discussion about independence, affiliation, and merger alternatives that would not have otherwise happened. The following conclusions were reached regarding each of the options assessed:

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Option 1: Remain Independent

- While WHS outperforms the market in terms of inpatient market share, operating margins continue to be razor-thin with limited cost-reduction opportunities.
- The COVID-19 pandemic and encroachment from regional competitors have challenged the organization's ability to sustain the current level of volumes and operating margins.
- WHS will need to be assertive about generating the capital capacity necessary to support long-term strategic investments for key priorities (e.g., physician alignment, IT, clinical program alignment, and care management).

Option 2: Create a New Regional System

- The difficulty of partnership execution increases exponentially with each additional party; while multi-party partnerships are not impossible, the execution risk is high.
- Competing cultures, community politics, and physician alignment dynamics compound the difficulty for WHS.
- Agreement will need to be reached on critical issues such as governance, asset integration, physician alignment, and service rationalization.

Option 3: Partner with a Non-Profit Health System

- This option meets several of WHS's organizational objectives and strategic requirements and would help respond to the competitive and market dynamics facing southwestern Pennsylvania hospital providers.
- At this time, WHS will be operating from a position of strength—a position that will allow it to have significant influence in determining its future role in the community and the region.

Hybrid Strategy: Independence and Non-Merger Alternatives

The recommended strategy is to remain independent while pursuing partnerships and alliances across the region with selected organizations that can provide specific resources and relationships that will lower per-unit costs in selected service lines and reduce total costs of care. Partnerships will also be pursued in specific service lines where gaps exist in provider and technology capabilities. The goal is to increase patient volume in inpatient and outpatient services, improve patient access to higher levels of care, and at the same time improve quality, safety, and patient experience.

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The WHS board has determined to remain vigilant in tracking key financial, operations, and quality performance indicators, setting thresholds that can trigger a reassessment of strategic alternatives. For the time being, independence remains the vision, with integration and selective alignment being the strategy.

Final Words Regarding an Independence/Merger Decision

Boards that govern independent hospitals and health systems at some point will or already have wrestled with the questions, "*Can* we remain independent?" and "*Should* we remain independent?" Regardless of the emotion attached to the discussion, objective unbiased analysis should be done to ensure that the board is considering what will be best for the community it serves and for the hospital to fulfill its fiduciary duty. Assess the facts with arduous rigor, deliberate openly, then choose the best course of action to ensure local sustainable healthcare regardless of whose name is on the door in the future. The community's health, healthcare offerings, and economic impact is depending on it.

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Executive Compensation and Governance Trends for 2021 and Beyond

By **Bruce Greenblatt,** Managing Principal**,** *SullivanCotter, Inc.*

As the response to COVID-19 continues, healthcare organizations nationwide face an uncertain environment in the near-term as vaccination rates slow, virus variants appear, and operational recovery from the pandemic accelerates. Additionally, there are a myriad of intermediate and longer-term forces at play—such as reimbursement pressures, technology disruption, workforce burnout and labor shortages, new competitive threats, and regulatory changes—that require attention.

The complexity of healthcare organizations continues to increase as pressures mount for financial sustainability, diversification, efficiency, and new care delivery models. Leadership retirements and burnout brought on by the pandemic have exacerbated the limited supply of executive talent with the skills, experience, and competencies needed to lead these complex organizations through significant change. As healthcare organizations and their boards confront this environment, executive compensation programs, talent strategies, and governance will continue to adapt.

In this article, we recap the response of healthcare organizations in 2020 and outline priorities for 2021 and beyond.

Pandemic Response: Impact on Executive Compensation

Compensation committees and healthcare leaders took several actions during 2020 in response to the pandemic:

- **Prioritizing the broader workforce:** The healthcare workforce rose to the challenge of meeting community needs as the pandemic took hold. The workforce made extraordinary professional and personal sacrifices to ensure patient needs were met. There was a focus on ensuring the broader workforce was supported through the implementation of special incentives and pay differentials, accommodations for childcare and other personal needs, and the delivery of base salary increases when financially viable (with budgets in the 2 to 3 percent range).

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- **Lowering base salary budgets:** Executive salaries were impacted with many freezing, temporarily reducing, or moderating increases. Broad-based workforce increases were prioritized over consideration of executive increases. About one-third of healthcare executives did not receive a base salary increase between 2020 and 2021. Overall, the median base salary increase for healthcare executives was 2 percent, which was lower than the initially projected pre-pandemic 2020 salary increase budget of 3 percent.
- **Changing incentives to reflect the COVID-19 response:** Executive incentive plans changed. Performance measures and goals were adjusted by many organizations to reflect shifting priorities in response to COVID-19. The adjudication of incentives was holistic as business judgment was applied to consider performance, pandemic response, treatment of the workforce, and stakeholder perspectives. Approximately 15 percent of executives did not receive an annual incentive award. For those who did receive an award, the typical payout as a percentage of the target opportunity was lower than in prior years.
- **Rewarding positions leading COVID-19 response and transformation:** Higher-than-average salary increases were observed for a number of positions that led the COVID-19 response or longer-term transformation efforts (e.g., Chief Operating Officer, Chief Medical Officer, Chief Technology Officer, Chief Nursing Officer, and Top Facilities Executive). In addition, more organizations reported emerging leadership positions in key functions, including telehealth, ambulatory care, digital strategy, and diversity, equity, and inclusion.

Key Priorities for 2021 and Beyond

There are five priorities for compensation committees as pay determinations are made this year and the executive compensation program's effectiveness is considered.

1. Compensation actions: Plan for flexibility as 2021 compensation decisions are made, to recognize the ongoing impact of the pandemic on operations:

- Executive base salary increase budgets are projected to rebound to pre-pandemic norms of 3 percent, although some organizations may provide more significant increase budgets to respond to retention and competitiveness needs.
- Additional salary adjustments are anticipated for select roles based on data from SullivanCotter's *2021 Health Care Management and Executive Compensation Survey* (e.g., physician leaders and executives in operations, technology, nursing, supply chain, and quality).

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➜ Key Considerations for Compensation Committees

As healthcare organizations and their boards address changing performance priorities and leadership recruitment and retention needs during this uncertain time, executive compensation programs, talent strategies, and governance will continue to adapt. Compensation committees should expect an active agenda in this environment, focusing on five priorities:

- Ensuring **compensation actions** (base salary increase budgets, market adjustments, and incentives for 2021 performance) account for the rebound in the industry, the highly competitive talent market, and the challenges of operating in the environment. Anticipate the use of business judgment as actions are determined.
- Align the **compensation philosophy** to evolving needs and provide for the flexibility to recruit, retain, and reward talent in line with changing needs.
- Adjust the **incentive compensation program** to ensure performance measures reflect evolving priorities and payouts align with meaningful performance outcomes.
- Review executive **talent strategies and succession plans** to account for new skill requirements and expected emergency and long-term succession requirements.
- Incorporate **diversity, equity, and inclusion (DE&I)** into the compensation strategy—review pay equity, consider the role of the compensation committee in DE&I governance, and determine how the incentives and other programs can further DE&I goals.

- Business judgment may be needed when determining incentive awards for 2021 performance, to account for the unanticipated effect on performance goals and priorities, as well as competitiveness considerations and stakeholder optics.

2. Compensation philosophy: Ensure the executive compensation philosophy supports the organization's recruitment, retention, and motivation needs:

- Peer groups that reflect the potential for recruiting talent from outside of traditional healthcare peers, including broader industry peers.
- Flexibility so that compensation can be appropriately competitive rather than tied to a specific percentile, to allow for variation based on a role's organization impact, performance, and other factors.

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- Allowance for variation in pay models for different business units (e.g., health plans, long-term care, and business ventures).

3. Performance and incentives: Examine the executive incentive plan to ensure it aligns with new performance priorities and measures of success:

- Measures and goals that capture operating and strategic objectives, such as financial sustainability, patient experience, community benefit, care access, and deployment of new delivery models (e.g., telehealth).
- The degree of stretch in performance goals to help ensure meaningful performance is attained for corresponding payouts.
- Consider long-term incentives that reward for attaining multi-year transformation objectives.
- Consider the impact of regulatory developments on incentives (e.g., actions to encourage more competition).

4. Executive talent strategy and succession: New skills and competencies will be required to achieve organizational goals. Plus, organizations should plan for executive turnover due to the competitive talent market and career/retirement changes accelerated by the pandemic:

- Expect to recruit from expanded talent markets (including for-profits) for select positions based on specific organizational needs (e.g., telehealth/digital executives from IT and population health executives from managed care organizations).
- Anticipate the need to provide highly competitive pay for new recruits.
- Refine executive succession plans (including the identification of emergency successors) based on the organization's talent needs.
- Ensure there is a strong talent pipeline and determine if talent will be developed internally or recruited externally.
- Assess organizational structure and spans of control to support the delivery of cost-effective and quality care using new operating models.
- Monitor the impact of regulatory developments (e.g., potential restrictions on non-competes).

5. Diversity, equity, and inclusion: Determine how diversity, equity, and inclusion (DE&I) priorities will impact the executive talent strategy, recruitment/retention, program design, and governance:

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- Assess executive and broader workforce diversity through the use of governance dashboards and other committee reporting; understand how talent strategies and succession plans are considering DE&I.
- Ensure that pay equity is assessed and that processes and policies are in place to monitor and maintain pay equity over time.
- Consider the use of DE&I measures in annual and/or long-term incentive programs.
- Expect highly competitive compensation for DE&I leadership roles.

Conclusion

Healthcare organizations increasingly are focused on opportunities emerging from the pandemic. Compensation committees should expect continued refinements to the executive compensation program and talent strategies to support organization and performance needs.

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Interest Rate Benchmarks Are Changing: Why Boards Should Care

By **Les Jacobowitz** and **Anne M. Murphy,** Partners**,** *Arent Fox LLP*

LIBOR, which is the benchmark used in many loans, bonds, and other financial instruments (including derivatives), is scheduled to be phased-out shortly. This dramatically impacts both existing financings and new financings, though the impact of this transition on companies is being minimized by banks, and not fully understood by many lawyers, financial advisors, and board members. This transition has significant financial and legal implications for any company, but especially for hospitals and health systems since they generally have inordinate exposures to LIBOR-based instruments through variable rate loans and interest rate swaps.

Banks are telling healthcare providers that the LIBOR transition is being implemented through standard bank form documents, likely through day-to-day financial management with possibly no internal or external financial or legal guidance, or board involvement. The reason for this lack of involvement is that, for existing financings, there is no *new* financing requiring counsel/advisor review and board approval, even if there may be substantial additional liabilities associated with the LIBOR transition. For new financings, there is typically no appreciation of the potential magnitude of this seemingly innocuous benchmark change.

Our experience is that these form documents are onerous on borrowers and, in essence, let the banks determine the new interest rates for healthcare organizations. By way of example, a 30 basis point interest rate differential between LIBOR and the new transition rate for a 10-year $100 million loan/bond/swap could cost a hospital or health system an aggregate of $3 million. Unplanned changes of this magnitude could add substantial risks to any organization, and is the reason for guidance from regulators including the Securities and Exchange Commission (SEC) and the Municipal Securities Rulemaking Board (MSRB), among others.

Importantly, other than for a retail customer, a bank may not be legally required to look out for the best interests of their client (i.e., your organization). This may also be true of certain law firms and financial advisors who could have undisclosed conflicts of interest as they may also represent your bank, even on your own transaction.

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➜ Key Board Takeaways:

- Due to bank manipulation, LIBOR is scheduled to cease being used as a benchmark index.
- LIBOR is utilized in many hospital and health system loan, equipment lease, and bond financings, and related interest rate swaps.
- The financial impact can be in the millions of dollars even with a relatively small amount of LIBOR exposure.
- In spite of the many financial and legal ramifications, boards have generally had minimal involvement in the LIBOR transition.
- To rectify this, boards can take the following actions, among others:
  - » Adopt a resolution requiring board approval for entering into any LIBOR transition documents.
  - » Immediately have financial staff quantify the amount of exposure that may (or may not) be readily apparent in the audited financial statements.
  - » Ensure that counsel *and* financial personnel are involved in all LIBOR transition documentation.
  - » Have counsel immediately review "standard" documentation to identify the risks and minimize such risks during document negotiation, being mindful that parallel changes need to be made in the financing documents and the related swaps to be effective at minimizing institution risk.
  - » If documents have already been executed, then have the recently amended documents modified to accomplish the foregoing.
  - » Discuss all tax ramifications of the transition with your accountants, and all disclosure and other legal concerns with your counsel.
  - » Identify any conflicts of interest of your banker, financial advisor, accountants, and counsel prior to implementation (the MSRB/SEC is in the process of promulgating rules in this regard with respect to banks and financial advisors).

LIBOR Transition

Rationale

In 2012, the LIBOR manipulation scandal exploded on the public scene when settlements were announced between Barclays Bank and bank regulators leading to:

- Worldwide investigations of many other financial institutions
- Billions of dollars of additional government regulator settlements

- Disbanding of the LIBOR regulator in the United Kingdom
- Litigation being brought in numerous jurisdictions, with the U.S. litigation ultimately consolidated in a few cases in the Southern District of New York

Phase-Out/U.S. Delays

As a result of the scandal, LIBOR is being phased-out of existence worldwide by the end of 2021, except in the United States.

In the U.S., bank regulators have insisted that no new LIBOR-based instruments be entered into after year-end, but active USD LIBOR tenors will still be available until June 2023. This delay is primarily due to the slow implementation of the transition process by financial institutions in the United States.

Practical Roadblocks

Our experience has been that banks have implemented this delayed transition as follows:

- Recommending that companies focus on inventorying their LIBOR exposure[1]
- Providing indecipherable LIBOR transition language a couple of days prior to closing
- Stating that this transition language:
    - Follows the Alternative Reference Rates Committee (ARRC) language, though it generally does not
    - Is non-negotiable, though the regulators have stated otherwise
    - Is "industry-standard"[2]

Financial Ramifications

Companies are likely to be significantly impacted financially by entering into "industry-standard" documentation without an in-depth analysis.

Benchmark Concerns

Though there are multiple concerns raised about credit-sensitive benchmarks to replicate LIBOR as well as "risk free" recommended benchmarks such as the secured

1 This is a good idea but it may be a red herring to distract from the financial and legal ramifications of the LIBOR transition as outlined below.

2 This statement is generally true since most financial institutions are presenting equally unfavorable language to companies.

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overnight financing rate (SOFR), any benchmark is likely preferable to LIBOR due to the ease by which it had been manipulated by the banks, as described above.

However, the "industry-standard" documentation being utilized provides banks the opportunity to keep new and existing financial instruments tied to LIBOR for the next couple of years. This is in spite of, or maybe because of, regulator insistence that there be no new LIBOR-based instruments offered after this year.

Futures Contract

As the "industry-standard" documentation offered by many banks permit the banks to change the existing interest rate to a new effective interest rate at any time before LIBOR ceases to be available in 2023, the documentation, in essence, is a futures contract, at least with respect to bond financings and swaps. These types of contracts require extra board scrutiny due to their associated risks, and are subject to additional requirements under securities laws and FINRA rules that should be considered by a company and the broker-dealer prior to execution.

New Interest Rates Determined At Bank's Sole and Absolute Discretion

Existing documentation is either 1) silent about the LIBOR transition, 2) has unworkable temporary fallbacks as LIBOR was never expected to be permanently discontinued, 3) can be interpreted to fallback to a commercially reasonable rate, and/or 4) can be declared null and void since an underlying critical basis of the contracts, the underlying benchmark, will cease to exist.

However, the foregoing is dramatically altered by the "industry-standard" documentation where the bank, in its sole and absolute discretion, selects:

- The new benchmark
- The new benchmark spread adjustment[3]
- The timing of implementation of the foregoing

In essence, most new documentation permits the bank to pick the new effective interest rate after the LIBOR transition without *any* input from the company borrower.

3 This is the adjustment between LIBOR and the new benchmark—the credit spread should remain unchanged during the LIBOR transition.

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Effective Interest Rate Analysis

A company's exposure to interest rate swaps and other derivatives will determine whether it is in its best interests to have a lower effective interest rate or, ironically, a higher effective interest rate when locked-in by the banks, as outlined below:

	Expected ↓ing Interest Rates	Expected ↑ing Interest Rates
LIBOR Loan/Bond Exposure Only	✓	X
LIBOR Loan/Bond Exposure Tied to Derivatives Exposure	X	✓

Tax Ramifications

When a LIBOR-based loan/bond resets and the new effective interest rate is lower, or a LIBOR-based loan/bond with a swap resets and the new effective interest rate is higher (i.e., the ✓'ed boxes), this could lead to forgiveness of debt with the resultant tax consequences.

Conversely, when a LIBOR-based loan/bond resets and the new effective interest rate is higher, or a LIBOR-based loan/bond with a swap resets and the new effective interest is lower, this could lead to significantly increased company liabilities with potential negative consequences. These adverse consequences include potential difficulties in meeting bank financial covenants.

It is critical to address this issue beforehand, rather than waiting to deal with it, after document execution, in connection with audited financial statement preparation. By that time, it will be too late to alter the financial terms in the bank or financing documentation.

Legal Ramifications

Disclosure

As a result of the rate resetting during the LIBOR transition, a company will have to disclose any material financial or legal impacts to the markets through the following filings:

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- 8-K (unscheduled events)
- 10-Q (regular quarterly reporting)/quarterly financial statements
- 10-K (annual reporting)/audited financial statements
- Continuing disclosure requirements for municipal securities on MSRB's Electronic Municipal Market Access (EMMA)

Loss of Existing Legal Rights

In addition to the loss of rights through execution of "industry-standard" documents having financial repercussions, a company will eliminate certain existing legal rights by executing documents initially provided by their financial institutions without negotiation:

- English law (versus U.S. law)
- International arbitration (versus U.S. courts)
- Bootstrapping of Prior Board Authorization
- Bootstrapping of Prior Agent Authorization

SEC Guidance

In addition to potential disclosure on the impact of the LIBOR transition on a company, the SEC has provided guidance to make sure that boards have considered the following:

- Independent third-party impact assessments
- Risk management vulnerability assessments of:
  - Company
  - Customers
  - Suppliers
- Board/senior management engagement

Board Impact

Committees and Senior Management

Due to the nature of the risks associated with the LIBOR transition, and depending upon the magnitude of the company's LIBOR exposure, the following board committees may need to be involved:

- Executive committee
- Corporate governance committee
- Audit/legal committees
- Finance/investment committees

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Naturally, the relevant senior management responsible for informing such committees should also be familiar with the financial and legal risks including, but not limited to, chief financial officers, controllers, chief risk officers, and general counsels.

Line Management

Importantly, line management and related professionals need to be integrated into the LIBOR transition process as they may unwittingly be implementing the LIBOR transition with the attendant consequences outlined above. This should include day-to-day financial managers as well as outside professionals such as accounting firms, outside counsel, and financial advisors.

Conclusion

The LIBOR transition has a myriad of financial and legal consequences that may adversely impact a company. In particular, this transition could very well serve as an excuse for banks to adjust interest rates on both existing and new financings despite warnings from regulators.

In response, hospital and health system boards and senior management should become educated about these risks and implement processes and procedures so as to ensure that such risks are recognized and minimized.

In lieu of this, companies can simply execute the "industry-standard" documentation presented to them by their financial institutions and later deal with the potential adverse ramifications of the LIBOR transition including, but not limited to, resultant litigation.

The Governance Institute thanks Les Jacobowitz and Anne M. Murphy, Partners at Arent Fox LLP, for contributing this article. They can be reached at les.jacobowitz@arentfox.com and anne.murphy@arentfox.com.

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