

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **SEC Identifies LIBOR Preparedness as an Examination Priority - Sherman & Sterling**

On June 18, 2020, the Securities Exchange Commission's (SEC) Office of Compliance Inspections and Examinations (OCIE) announced the details of an examination initiative specifically focused on LIBOR preparedness.[1] OCIE has previously identified LIBOR preparedness of registrants (e.g., SEC-registered investment advisers, broker-dealers, investment companies, municipal advisors, transfer agents and clearing agencies) as a key examination priority for 2020, but the latest announcement offers specific insights into what information examiners will be seeking from registrants.[2]

### **Background**

The expected cessation of LIBOR after 2021 is expected to significantly impact financial markets and present a multitude of financial, legal, operational, conduct and reputation risks for certain market participants. Preparing for the transition away from LIBOR to alternative rates is viewed as essential by a number of regulators, including the SEC. OCIE will be conducting examinations to facilitate an orderly transition.

### **Examination Process**

According to OCIE's release, examiners will review whether and how a registrant has evaluated the potential impact of the LIBOR transition on the organization's: (i) business activities; (ii) operations; (iii) services; and (iv) customers, clients and/or investors (collectively, investors). Examiners will review the plans that registrants have developed and steps they have taken to prepare for the LIBOR discontinuation, including with respect to operational readiness and disclosures. OCIE also identified the types of information and documents that may be sought in these examinations, including:

- Information regarding any individuals or groups (e.g., internal committees, working groups or transition teams) assigned responsibility to oversee or manage the effects of the LIBOR transition on the registrant, including information regarding the frequency of any meetings on this topic and whether minutes are kept.
- The identity of any third parties the registrant has used or plans to use to assess the impact of the LIBOR transition on the firm or its investors.
- Documentation or descriptions of any analysis performed to identify contracts or obligations held and/or issued by the registrant or its investors that may be affected by the LIBOR transition and any remediation plans thereof.
- Information regarding any investors whose fee structure (e.g., performance-based fees) or performance reporting (e.g., use of LIBOR-linked benchmark) could potentially be affected by the LIBOR transition.
- Any written assessments, strategic plans (including remediation plans, as applicable), roadmaps or timelines prepared by or for the registrant regarding preparation for the LIBOR transition, including the consideration of alternative reference rates.
- Materials referencing the LIBOR transition provided to the registrant's board of directors, any

committee thereof, any board member, the board or board member(s) of any investors, or the board, legislative body or member(s) thereof of any municipal entity or obligated person client, if applicable, or equivalent governing bodies or offices, if the registrant is not organized as a corporation.

- Information regarding any third-party vendors the registrant uses that may be impacted by the LIBOR transition, including the services provided (e.g., back office) and how the vendor may be impacted.
- Any implemented or planned changes to compliance procedures, controls or surveillance systems designed to monitor for LIBOR-linked instruments or contracts recommended or sold to clients.

### **What Registrants Should Be Doing Now**

The foregoing list of information that will be sought by SEC examiners is not exclusive and should underscore the urgency of having both experienced counsel on LIBOR matters and a well-designed transition roadmap. Ideally, firms should not wait until an exam is scheduled or a request for information is received to start preparing. And, as a matter of best practice, firms should begin collecting information that would be responsive to the areas identified by OCIE.

### **Footnotes**

[1] See SEC, "[Examination Initiative: LIBOR Transition Preparedness](#)" (June 18, 2020).

[2] See SEC, "[Examination Priorities for Fiscal Year 2020](#)" (Jan. 7, 2020).

**Shearman & Sterling LLP** – Donna Parisi, Geoffrey B. Goldman, Azam H. Aziz , Mark Chorazak, Lona Nallengara and Jennifer Oosterbaan

July 20 2020