ALERTS

LIBOR Transition: SEC Announces Examination Initiative

June 23, 2020

In January 2020, the SEC's Office of Compliance Inspections and Examinations ("OCIE") identified registrant preparedness for the transition away from the London Interbank Offered Rate ("LIBOR") as an examination program priority for the 2020 fiscal year.[1] On June 18, 2020, OCIE released a Risk Alert[2] that provides registered investment advisers with additional information about the scope and content of these examinations.[3]

In the Risk Alert, OCIE staff asserted that preparation for the transition from LIBOR is essential to minimize potential adverse effects associated with the expected discontinuation of LIBOR after 2021. OCIE also warned that assessments of preparedness for the expected discontinuation (as well as the transition to alternative reference rates, if applicable) will be a focus of upcoming examinations. These examinations can include a review of a registrant's evaluation of the impact of LIBOR discontinuance on its business activities, operations and services, as well as on their customers, clients and investors, as applicable. For example, OCIE stated that it will review the registrant's plans and steps taken for:

- The firm's and investor's exposure to LIBOR-linked contracts that extend past the current expected discontinuation date, including any fallback language incorporated into these contracts;
- The firm's operational readiness, including any enhancements or modifications to systems, controls, processes and risk or valuation models associated with the transition to a new reference rate or benchmark;

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- The firm's disclosures, representations and/or reporting to investors regarding its efforts to address LIBOR discontinuation and the adoption of alternative reference rates;
- The identification and response to potential conflicts of interest associated with the LIBOR discontinuation and the adoption of alternative reference rates; and
- Client's efforts to replace LIBOR with an appropriate alternative reference rate.

Given the lead time necessary to amend or renegotiate trading and business arrangements, investment advisers should consider undertaking an assessment of their clients' exposure to LIBOR discontinuance as soon as practicable. Advisers should also consider documenting their transition plans, both to assist in addressing the LIBOR discontinuance as well as to help shorten any regulatory or investor inquiries on an adviser's readiness.

OCIE rarely provides sample requests lists, like the one attached as Appendix A to the Risk Alert, in advance of examinations. Firms whose business activities, operations, services or investors/clients will be impacted by the discontinuation of LIBOR should review the sample list and identify materials, information and documentation that will help them to assess, and to address, their preparedness for LIBOR's discontinuation.

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If you have any questions concerning this *Alert* or would like assistance with the transition from LIBOR, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] The examination priorities can be found here.

[2] The Risk Alert can be found at here.

[3] Previously, the SEC staff also released an announcement by the Division of Corporate Finance, Division of Investment Management, Division of Trading and Markets, and the Office of the Chief Accountant addressing the discontinuance of LIBOR. For a detailed summary, see the *SRZ Alert* "SEC Staff Publishes Statement on LIBOR Transition," available here.

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