September 25, 2024

SEC Amends Fund Reporting Requirements on Forms N-PORT and N-CEN, Issues Guidance on Liquidity Risk Management Programs

The Securities and Exchange Commission (SEC) recently adopted amendments to the reporting requirements of Forms N-PORT and N-CEN and issued guidance related to registered open-end funds' liquidity risk management programs (LRMPs). The amendments to Form N-PORT, and related Rule 30b1-9 under the Investment Company Act of 1940 (1940 Act), increase the frequency of information reported to the SEC and make that information public more frequently and more quickly. The Form N-CEN amendments require funds subject to Rule 22e-4 under the 1940 Act (Liquidity Rule) to include more information about the service providers used to fulfill the LRMP requirements.

Compliance Dates: Form N-PORT and Form N-CEN filings made on or after November 17, 2025 must comply with the amendments. Fund groups with net assets of less than $1 billion will have until May 18, 2026 to comply with the Form N-PORT amendments.

I. Background and Changes to Form N-PORT

Form N-PORT requires funds to report information about each portfolio holding, including valuation data; information regarding flows, repurchase agreements, securities lending activities and counterparty exposures; terms of derivatives contracts; and discrete portfolio-level and position-level risk measures. Most registered open-end and closed-end funds are required to file Form N-PORT; but money market funds, small business investment companies (SBICs) and exchange-traded funds (ETFs) organized as unit investment trusts (UITs) do not file this form.

Currently, funds file Form N-PORT on a quarterly basis, no later than 60 days after the end of a fiscal quarter. These reports contain portfolio level information about a fund as of the month-end for each month in the quarterly period. Only information reported for the third month of a quarter is made publicly available by the SEC.

The amendments to Form N-PORT will (i) require funds to file Form N-PORT monthly; (ii) make every report publicly available 60 days after the end of the month to which the report relates; (iii) change entity identifier items and definitions; and (iv) make conforming amendments aligning the periods covered by Form N-PORT items with the new reporting schedule.

Filing Frequency: Under the amendments, funds will be required to file reports on Form N-PORT monthly, within 30 days of the end of the month to which a report relates. As a result, funds will need to make twelve Form N-PORT filings in a given year, as opposed to the four that funds currently file.

When (and What) Information will be Made Public: As amended, a fund's monthly reports on Form N-PORT will become publicly available 60 days after the end of the month to which a report relates.

Current Form N-PORT items that are not reported publicly will continue to be nonpublic in individual reports. These items include individual portfolio investment liquidity classifications, a fund's highly liquid investment minimum (HLIM), derivatives transactions, derivatives exposure for limited derivatives users, median daily value at risk (VaR), median VaR ratio, VaR backtesting results, country of risk and economic exposure, delta, miscellaneous securities, or explanatory notes regarding any of these items that can be used to identify a particular fund or investment adviser.

The SEC suggested that certain mitigating factors should limit predatory trading that might result from increased portfolio holdings disclosures, including the 60-day delay in publication of data. The SEC noted that funds could acquire or dispose of securities prior to publication, and further noted that the "miscellaneous securities" classification on Form N-PORT (described below) could be used to build new positions without individually identifying those portfolio investments to the public.

Conforming Amendments: The changes to the filing and publication frequency of Form N-PORT filings necessitated two other revisions.

First, the SEC amended Part D of Form N-PORT to allow funds to publicly report an aggregate amount of holdings in the "miscellaneous securities" category each month, so long as those positions do not exceed five percent of a fund and have not been previously disclosed to the public.[1] Detailed information about these miscellaneous securities holdings will still be required in the report, but the specific information will not be made public. This change permits funds some flexibility in hiding new positions established over a period end, but the utility is limited by other information disclosures.

Second, funds will report return and flow information (including net change in unrealized appreciation or depreciation and net realized gain or loss) only for the month covered by the report rather than the three preceding months.

II. Changes to Form N-CEN

Under the amendments to Form N-CEN, a fund subject to the Liquidity Rule will be required to provide the following information about service providers used to fulfill LRMP requirements:

1. the name of each liquidity service provider;
2. identifying information, including the legal entity identifier, if available, and location, for each liquidity service provider;
3. whether the liquidity service provider is affiliated with the fund or its adviser;
4. the asset classes for which the liquidity service provider provided classifications; and
5. whether the service provider was hired or terminated during the reporting period.

III. Liquidity Risk Management Program Guidance

While the SEC did not adopt its proposed amendments to the Liquidity Rule, it provided guidance on Liquidity Rule issues identified by the SEC staff through its outreach and monitoring activities. Under the Liquidity Rule, a fund must classify its investments into categories based on how quickly an investment could be converted to cash without substantially affecting the market price and the price at which the investment is carried on a fund's books. The SEC's guidance addressed (1) the frequency

[1] Form N-PORT permits funds to report as "miscellaneous securities" an aggregate amount of portfolio investments that does not exceed 5% of the total value of the fund's portfolio investments, provided that the securities are not restricted, have been held for one year or less prior to the end of the reporting period of the related report, and have not previously been publicly disclosed.

of classifying the liquidity of fund investments, (2) the definition of "cash" under the Liquidity Rule, and (3) the determination and review of HLIMs.

Frequency of Classification: Under the Liquidity Rule, funds must review liquidity classifications more frequently than monthly if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of the fund's investment classifications.

During examinations and outreach, SEC staff observed several instances in which funds were unprepared to review classifications intra-month. The SEC stated in its guidance that a fund should identify the type of information it will use to identify relevant intra-month changes and review liquidity classifications intra-month, as well as the timeliness of that information. The guidance noted the SEC has previously provided in the Liquidity Rule Adopting Release examples of changes in market, trading, and investment-specific considerations that funds may wish to consider. The guidance added that funds should generally consider reviewing liquidity classifications intra-month if:

1. a fund substantially increases the size of its position in an investment, such that trading a larger size of that investment could materially affect the liquidity classification of that investment; or
2. newly acquired investments are reasonably expected to result in material changes to the liquidity profile of a fund (particularly if the change may cause the fund to fall below its HLIM or cause the fund to exceed the Liquidity Rule's limit on illiquid investments).

Meaning of "Cash": The Liquidity Rule requires a fund to consider the time in which it expects an investment to be convertible to cash (*i.e.*, sold and settled) without significantly changing the market value of the investment when determining whether an investment can be classified as highly liquid or moderately liquid. The SEC has previously stated that "cash" in the Liquidity Rule means U.S. dollars and does not include foreign currencies or cash equivalents. As such, funds must consider conversion to U.S. dollars when classifying an investment.

According to the guidance, for conversions of foreign currency investments, funds must consider the amount of time it is reasonably expected to take to convert the foreign currency into U.S. dollars under current market conditions without significantly changing the currency exchange rate. This analysis should include consideration of currency controls, whether there is an active market in forward or spot contracts exchanging the currency for U.S. dollars, and any delays in currency conversions driven by market structure or operations.

The SEC also noted that funds should not base liquidity determinations in foreign investments on the ability to sell, dispose of, or settle an investment into the local currency without also considering the ability to convert the local currency into U.S. dollars for purposes of paying shareholder redemptions. In doing this, funds generally should consider: (1) reasonable expectations of the period of time in which a foreign non-currency investment can be sold and settled in the local market without significantly changing the market value of the investment; and (2) reasonable expectations of the period of time in which any foreign currency received upon settlement can be converted to U.S. dollars without significantly changing the currency exchange rate.

The SEC stated that if currency controls are implemented in a foreign jurisdiction, a fund's investments in the relevant jurisdiction, including holdings of the local currency, could become illiquid if a fund does not reasonably expect to be able to convert the local currency into U.S. dollars within seven calendar days. Further, other investments in that jurisdiction that would be sold or disposed of in exchange for the illiquid local currency also should be classified as illiquid.

HLIMs: The Liquidity Rule requires funds that do not primarily hold assets that are highly liquid investments to have a HLIM, and the SEC has previously issued guidance on how funds should determine their HLIMs.

In its guidance, the SEC reiterated that a fund's HLIM should take into account liquidity risk factors particular to the fund. For example, funds that invest significantly in less liquid or illiquid investments, such as bank loan funds, generally should consider establishing a HLIM that is higher than that of a more liquid fund. The guidance adds that while a line of credit or similar arrangement can facilitate a fund's ability to meet unexpected redemptions and can be taken into consideration when determining a fund's HLIM, the SEC believes that liquidity risk management is better conducted primarily through construction of a fund's portfolio.

The SEC concluded its guidance by noting that it is not dictating how a portfolio manager should meet fund redemptions. The SEC reiterated that the only consequence under the Liquidity Rule of a fund dropping below its HLIM is the triggering of the fund's shortfall policies and procedures, which must include notifying the fund's board of the shortfall at the board's next regularly scheduled meeting or, if the shortfall continues for more than seven consecutive calendar days, notifying the board and filing a confidential report with the SEC on Form N-RN within one business day.

The SEC's Adopting Release and LRMP Guidance can be found here. The original 2016 release adopting Forms N-PORT and N-CEN can be found here.

S&K Observations and Insights

The changes to Form N-PORT update the frequency and extent to which funds must formally disclose the details of their investment programs. Under the current regime, a fund's portfolio holdings are filed with the SEC quarterly, no later than 60 days after the end of a fiscal quarter, and only information reported for the third month of a quarter is made publicly available by the SEC. Under the new regime, a fund's portfolio holdings will be filed with the SEC monthly, within 30 days of the end of the month to which a report relates, and information will become publicly available 60 days after the end of the month to which a report relates. This update changes the scope and amount of information about a fund's investment activity, but for many vehicles, such as fully transparent ETFs, extensive information about a fund's holdings is already public. In addition, many funds already deliver information reports about a fund's holdings, such as through fact sheets and portfolio disclosures on fund websites. Thus, although the amendments increase the amount of information filed about a portfolio, including data about the fund's internal risk assessments, the amendments reflect the significant changes in how the market treats transparency since the filing rules were initially adopted in 2016.

In response to the amendments, funds and their administrators should prepare to compile and review the information that will be required under the accelerated filing schedule for Form N-PORT. Funds will need to update their registration statement disclosures about the frequency of required disclosure of portfolio holdings information or the public availability of such information.

Additionally, funds should review their LRMPs and related policies and procedures in light of the Liquidity Rule guidance provided by the SEC to determine whether such guidance necessitates any changes to the LRMP, related policies and procedures or the liquidity classifications of certain holdings. Funds that hold non-US securities should also (i) revisit their LRMP bucketing classifications, taking into account the currency conversion time frame (which can be concurrent with settlement times), and (ii) review their HLIM analysis and determine whether, based on the local markets of their holdings, an HLIM should be imposed or increased. For many funds holding securities in non-US developed markets and emerging markets, custodians can provide a solution to foreign currency conversion issues.

Notably, the SEC did not adopt some elements of the proposal:

- Funds will not be required to present their complete portfolio holdings with each month's filing in accordance with Regulation S-X requirements. Funds will still provide information about the entire portfolio but will not attach the formal schedule of investments in Regulation S-X format.
- The SEC did not adopt the proposed swing pricing changes, and funds will not be required to report information regarding swing pricing.
- The SEC did not adopt its proposed changes to liquidity classifications or a requirement that funds report aggregated information on their investments' liquidity classifications.

While these aspects of the proposal were not included in the final rule, the SEC's current regulatory agenda indicates that they could be re-proposed in 2025.

Seward & Kissel LLP will continue to provide insight on any related developments.

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If you have any questions regarding the foregoing, please contact your Investment Management Group attorney at Seward & Kissel LLP.