

MEMO# 30331

October 21, 2016

SEC Adopts Enhanced Reporting Requirements for Funds

[30331]

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TO: ACCOUNTING/TREASURERS MEMBERS No. 32-16
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BROKER/DEALER ADVISORY COMMITTEE No. 37-16
CHIEF RISK OFFICER COMMITTEE No. 32-16
CLOSED-END INVESTMENT COMPANY MEMBERS No. 22-16
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TRANSFER AGENT ADVISORY COMMITTEE No. 51-16
UNIT INVESTMENT TRUST MEMBERS No. 12-16
VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 24-16 RE: SEC ADOPTS
ENHANCED REPORTING REQUIREMENTS FOR FUNDS

The Securities and Exchange Commission ("SEC" or "Commission") recently adopted new rules and amended existing rules (together, "final rules") intended to modernize investment companies' reporting and disclosure of information.[\[1\]](#) The final rules, adopted largely as proposed, were modified in a number of important respects in response to comments, including many from ICI. The final rules require certain funds to file portfolio holdings reports and other data monthly with the SEC on new Form N-PORT. The final rules also amend Regulation S-X and require funds to provide standardized, enhanced derivatives disclosure in fund financial statements. In addition, the final rules require most funds to file census-type information annually with the SEC on new Form N-CEN. Funds must file the Form N-PORT and N-CEN information in a structured data (XML) format to

facilitate the ability of the SEC and investors to collect the data and analyze the information. In connection with adopting the final rules, the SEC amended certain existing forms to require funds to disclose information about their securities lending activities and rescinded Forms N-Q and N-SAR.[\[2\]](#)

The final rules do not include proposed Rule 30e-3, which would have given funds the option to deliver shareholder reports by posting the reports online and mailing a notice to shareholders. The SEC chose not to adopt that proposed rule at this time because it believes that additional consideration is appropriate in light of comments received, including several from ICI.

This memorandum summarizes the new and amended rules in five main sections, below: (I) Form N-PORT; (II) Regulation S-X; (III) Form N-CEN; (IV) Form Amendments Regarding Securities Lending Activities; and (V) Compliance Periods.

Please note that, to assist members in implementing the final rules, ICI will host events on November 17 and December 6 on the implications of the final rules (and the SEC's recently adopted liquidity risk management rules) for the fund industry. Section VI of this memorandum provides more information about each of those events.

I. Form N-PORT

New Form N-PORT requires management investment companies (except for money market funds and small business investment companies) and each exchange-traded fund structured as a unit investment trust to report portfolio holdings and additional information on a monthly basis. Registrants offering multiple series must file a report for each series separately, even if some information is the same for two or more series. Funds must file Form N-PORT no later than 30 days after the close of each month. As proposed, a fund's Form N-PORT for each third month will be made publicly available 60 days after the end of the fund's fiscal quarter.

The SEC believes that this information will assist the Commission in monitoring risks and trends and assist Commission staff in examinations, enforcement, and formulating policy. It also believes that the filing will help investors and other potential users better understand fund investment strategies and risks, and better compare funds with similar strategies. As described in more detail below, Form N-PORT requires funds to report certain information about the fund and its portfolio investments as of the close of the preceding month, including:

- General fund information;
- Assets and liabilities;
- Certain portfolio-level metrics;
- Information regarding securities lending counterparties;
- Information regarding monthly returns;
- Flow information;
- Information regarding each portfolio investment;
- Miscellaneous securities (if any);
- Explanatory notes; and
- Exhibits

In response to ICI and others' concerns about the SEC's ability to employ sound data security practices, the SEC explained that it is working to design controls and systems for

the use and handling of Form N-PORT data in a manner that reflects the sensitivity of the data and its confidential nature.

A. General Fund Information (Section II.A.2.a)[3]

Funds will provide general information including the registrant's name, name of the series, relevant file numbers and fiscal-year ends. In addition, funds will need to provide the Legal Entity Identifier number of the registrant and series of the fund. Funds that do not have LEIs must obtain them to provide a consistent means of identification.

In response to ICI's and others' comments that funds should not be required to engage in the costly and time-consuming exercise of converting their portfolio holding records to a "trade date plus zero" basis (as is currently required for financial statements and portfolio holdings reports), the final rules do not require funds to report holdings on a "trade date plus zero" basis. Instead, funds must report Form N-PORT portfolio information on the same basis they use to calculate net asset value, which generally is on a "trade date plus one" basis.

Additionally, in response to an ICI comment that the SEC explicitly state that funds may make and rely on reasonable judgments, the SEC added an instruction to the form clarifying that a fund can respond to items on the form using its own methodology and the conventions of its service providers, as long as the methodology and conventions are consistent with the way the fund reports internally and to investors.

B. Assets and Liabilities (Section II.A.2.b)

Part B of Form N-PORT includes certain portfolio-level information about the fund, including total assets, total liabilities and net assets. For assets, funds must disclose the aggregate value of Regulation S-X permitted "miscellaneous securities" held in their portfolios that do not exceed 5 percent of the total value of their portfolio investments, provided the miscellaneous securities have been held for 1 year or less and have not been previously reported. Funds also must report each underlying investment in a controlled foreign corporation used to invest in certain types of instruments (e.g., commodities). For liabilities, funds must identify aggregate amounts of borrowings attributable to notes payable, bonds, and similar debt. In addition, funds must disclose payables for investments that will be made at a later date and liquidation preferences of outstanding preferred stock. The SEC believes that disclosure of these liabilities will assist it and its staff in analyzing the fund's financial leverage, liquidity profile and ability to meet redemptions or share repurchases.

C. Portfolio Level Metrics (Section II.A.2.c)

The final rules require funds to provide portfolio-level measures intended to help the SEC staff better understand and monitor funds' exposures to changes in interest rates and credit spreads across the yield curve. Specifically, if the average value of a fund's debt securities positions, including derivatives whose reference asset(s) include debt securities or interest rates, for the previous three months exceeds 25 percent of the fund's net asset value, the fund must provide a portfolio-level calculation of duration and spread duration across certain maturities in the fund's portfolio. Consistent with ICI's recommendations, the SEC increased the threshold from 20 percent to 25 percent, to match the Commission's threshold for disclosing industry concentrations in Form N-1A, and revised the calculation to base it on a three-month average of the fund's debt securities positions, in order to

mitigate short-term market fluctuations that could cause a fund to temporarily exceed the threshold. To report duration, the fund must calculate the change in the fund's portfolio value from a 1 basis point change in interest rates (commonly known as DV01) and from a 100 basis point change in interest rates (DV100). To report spread duration, which measures the fund's sensitivity to changes in credit spreads, the fund must calculate the change in the fund's portfolio value from a 1 basis point change in credit spreads (SDV01) where the shift is applied to the option adjusted spread, aggregated by non-investment grade and investment-grade exposures. Duration and spread duration must be reported for five key rates along the interest rate curve (3 month, 1 year, 5 years, 10 years, and 30 years). The SEC reduced the number of key rates for which duration and spread duration must be reported from 11 to 5 based on comments that reducing the number of key rates would reduce fund reporting burdens, while still accomplishing the Commission's regulatory objectives. Funds must report these key rate durations for each applicable currency in the fund, subject to a 1 percent *de minimis* threshold.

The Commission did not accept recommendations from ICI and others to keep portfolio-level risk metrics information non-public. Commenters had argued that inputs and assumptions cause these risk metrics to be subjective, and lead to a risk that investors mistakenly may compare risk metrics across funds or believe that risk metrics data represents a fund's overall risk. The Commission noted its belief that, because these risk metrics are reported at the portfolio level, potential users will not be comparing different risk metrics for the same investment in different funds and, because the measures aggregate each investment's assumptions and projections, the measures are less likely to imply a false sense of precision.

D. Securities Lending (Section II.A.2.d)

The final rules require funds to report securities lending information on both Forms N-PORT and N-CEN as well as other forms, as described in Section IV, below. On Form N-PORT, funds must disclose information about each borrower in any securities lending transaction, including the name of the borrower, its LEI number, and the aggregate value of all securities on loan to the borrower. The SEC disagreed with arguments from ICI and others that reporting all borrowers would be unduly burdensome or costly and comments from others that borrower information should remain non-public. Form N-PORT also requires funds to provide a description of the amount, value and type of all non-cash collateral that it receives. Consistent with ICI's comments, however, the SEC recognized that those investments typically are not fund assets under US Generally Accepted Accounting Principles because funds typically do not "control" the non-cash collateral. Therefore, funds will report information for each type of non-cash collateral received for loaned securities that is not treated as a fund asset in a separate item on Form N-PORT.

E. Return Information (Section II.A.2.e)

Form N-PORT requires that funds report monthly returns for each of the preceding three months for each class of its shares. Returns must be calculated consistent with the formulas required for calculating returns in the risk-return summary of the fund's prospectus and sales materials. Funds also must report monthly net realized gain (loss) and net change in unrealized appreciation (or depreciation) attributable to derivatives by asset category (e.g., commodity, credit, equity, foreign exchange, interest rate, and other) and type of derivative instrument (i.e., forward, future, option, swaption, swap, warrant, and other), rather than solely by type of derivative as ICI recommended. The SEC believes that both elements will make the information more informative than reporting either in

isolation. Additionally, funds must report monthly net realized gain (loss) and net change in unrealized appreciation (or depreciation) attributable to investments other than derivatives.

F. Flow Information (Section II.A.2.f)

As proposed, Form N-PORT requires funds to separately report the total net asset value of: (1) shares sold (including exchanges but excluding reinvestment of dividends and distributions); (2) shares sold in connection with reinvestment of dividends and distributions; and (3) shares redeemed or repurchased (including exchanges). In response to ICI and others' comments that funds generally cannot look through omnibus accounts to underlying information, the SEC clarified in an instruction to Form N-PORT that funds can report flow information on a net basis for fund shares held in omnibus accounts.

G. Schedule of Portfolio Investments (Section II.A.2.g)

Part C of Form N-PORT requires funds to report certain information on an investment-by-investment basis about each investment a fund and its consolidated subsidiaries hold at the close of the preceding month. Funds will have the option of reporting any "miscellaneous securities" non-publicly on Part D of the form.

1. Information about All Investments (Section II.A.2.g.i)

Funds must provide basic information about each security, including: (1) the name of the issuer; (2) LEI of the issuer (if any); (3) title or description of the investment; (4) CUSIP number of the investment; (5) and at least one other identifier (*i.e.*, ISIN, ticker, or other unique identifier). Funds must report the amount of each investment as of the end of the reporting period and the number of units or principal amount for each investment, as well as the value of each investment at the close of the period, and the percentage value of each investment compared to the net assets of the fund. Funds also must report the currency in which the investment was denominated and, if not denominated in US dollars, the exchange rate used to calculate its value. Further, funds must provide the payoff profile of the investment (*i.e.*, whether the investment is long, short or N/A) and classify the investment into one of several asset types (*e.g.*, short-term investment vehicle, repurchase agreement, equity-common, equity-preferred, debt, *etc.*) and issuer types (*e.g.*, corporate, US Treasury, US government agency, *etc.*). As proposed, funds will need to disclose whether the investment is a restricted security and whether the fund categorizes the investment as a Level 1, Level 2, or Level 3 fair value measurement under GAAP or whether there is no level associated with it (*e.g.*, net asset value per share used as a practical expedient).

Funds must disclose the country in which the issuer is organized and, if different, the country that corresponds to the country of investment or issuer based on the concentrations of risk and economic exposure of the investment. Consistent with ICI's recommendations, the SEC will not disclose publicly the country of risk and economic exposure determinations.

2. Debt Securities (Section II.A.2.g.ii)

Form N-PORT requires additional information about each debt security the fund holds to gain transparency into the payment flows and convertibility into equity of such investments. Funds must disclose the maturity date, coupon (reporting annualized rate and

indicating whether it is fixed, floating, variable or none), and whether the security is currently in default, whether interest payments are in arrears, or whether any coupon payments have been deferred by the issuer. Funds also must disclose whether any portion of the payments are paid in kind. The final rules also require funds to disclose additional information for convertible securities, including whether the conversion is mandatory or contingent, the conversion ratio, information about the asset into which the debt is convertible, and the delta of the security (*i.e.*, the ratio of the change in the value of the option to the change in the value of the asset into which the debt is convertible). The SEC, in response to ICI and other commenters, will not disclose publicly the delta of convertible debt securities or any derivative.

3. Repurchase and Reverse Repurchase Agreements (Section II.A.2.g.iii)

Form N-PORT requires each fund to report additional information for each repurchase and reverse repurchase agreement it holds. Funds will report the category that reflects the transaction from the fund's perspective (repurchase, reverse repurchase agreement), whether a central counterparty clears the transaction (and, if so, the name and LEI of the central counterparty), repurchase rate, whether the repurchase agreement is tri-party, and the maturity date. Funds also must report information concerning the securities subject to the repurchase agreement (*i.e.*, collateral), including the principal amount and value of collateral, as well as category of investments that most closely represents the collateral.

4. Derivatives (Section II.A.2.g.iv)

Funds that hold derivatives must report additional information about those derivatives, including identifying the type of each derivative instrument held and the name and LEI of each counterparty (including central counterparties). Form N-PORT also requires funds to report terms and conditions of each derivative instrument that are important to understanding the payoff profile of the derivative. For options and warrants, funds would report the type (*e.g.*, put), payoff profile (*e.g.*, written), number of shares or principal amount of underlying reference instrument per contract, exercise price or rate, expiration date and the unrealized appreciation or depreciation of the option or warrant. Funds also must report the delta of options and warrants to the SEC, but the SEC, similar to its treatment of the delta of convertible debt securities, will not disclose publicly the delta of any derivative.

Form N-PORT requires funds to describe the reference asset (including name of issuer, title of issue and relevant securities identifier) of the derivative. For derivatives that have reference assets that are non-public indices or "custom baskets" of assets, the SEC adopted a tiered reporting structure that requires funds to provide a narrative description of the reference asset when the derivative's notional amount is less than 1 percent of the fund's net assets. When the notional amount of the derivative represents more than 1 percent, and up to 5 percent, of a fund's net assets, the fund must report the top 50 components of the index or basket and those components that exceed 1 percent of the notional value of the index or basket. For investments in a derivative with a non-public index or custom basket reference asset whose notional amount exceeds 5 percent of the fund's net assets, the fund must provide: (i) the name, (ii) identifier (CUSIP of each component, ISIN, ticker, or other identifier), (iii) number of shares or notional amount or contract value, and (iv) value of every component in the index or custom basket. In this regard, the SEC incorporated comments from ICI recommending that the percentage threshold for reporting all underlying reference asset information be increased from 1 percent to 5 percent of a fund's net assets and that the SEC not require funds to provide

unrealized appreciation and depreciation for components of the underlying index.

For futures and forwards (other than foreign exchange forwards), Form N-PORT requires funds to report a description of the reference instrument, the payoff profile (*i.e.*, long or short), expiration date, aggregate notional amount or contract value as of the trade date and unrealized appreciation or depreciation. The description of the reference instrument would conform to the same requirements as the description of reference instruments for options and warrants.

For forward foreign currency contracts and foreign currency swaps, funds will report the amount and description of the currency sold, the amount and description of the currency purchased, settlement date, and unrealized appreciation or depreciation.

For swaps (other than foreign currency swaps), funds will report the description and terms of payments necessary for a user of financial information to understand the nature and terms of payments to be paid and received, including, as applicable: (1) a description of the reference instrument, obligation, or index; (2) financing rate to be paid or received; (3) floating or fixed rates to be paid and received; and (4) payment frequency. The description of the reference instrument would conform to the same requirements as the description of reference instruments for options and warrants. Funds also will report upfront payments or receipts, unrealized appreciation or depreciation, termination or maturity date, and notional amount. The SEC did not accept ICI and other commenters' recommendation that publicly disclosing financing rates, which are commercial terms of a deal negotiated between the fund and its counterparty, could harm shareholders, instead stating that increased disclosure could improve negotiations and provide investors better information.

For derivatives that do not fall into any of the enumerated categories on Form N-PORT, funds must provide a description of information sufficient for a user of financial information to understand the nature and terms of the investment. This must include, as applicable, currency, payment terms, payment rates, call or put features, exercise price, and a description of the reference instrument that conforms to the same requirements as the description of reference instruments for options and warrants, among other things. Funds also must report termination or maturity (if any), notional amount(s), unrealized appreciation or depreciation, and delta (if applicable).

5. Securities on Loan and Cash Collateral Reinvestment (Section II.A.2.g.v)

The SEC adopted, substantially as proposed, requirements that funds report information about securities on loan and the reinvestment of cash collateral that secures the loan. For each investment held by the fund, a fund will report: (1) whether the fund lent any portion of the investment and, if so, the value of the investment on loan; (2) whether any amount of the investment represented reinvestment of the cash collateral and, if so, the dollar amount of such reinvestment; and (3) whether any portion of the investment represented non-cash collateral treated as part of the fund's assets and received to secure loaned securities and, if so, the value of such non-cash collateral.

H. Miscellaneous Securities (Section II.A.2.h)

As Regulation S-X currently permits, funds will have the option of identifying and reporting certain investments as "miscellaneous securities" when those securities are not restricted, have been held for not more than one year prior to the date of the related balance sheet, and previously have not been made available to the public. Funds can report these

securities, which cannot exceed 5 percent of a fund's net assets, non-publicly to the SEC in Part D of Form N-PORT.

I. Explanatory Notes (Section II.A.2.i)

Funds will have the option of providing explanatory notes related to the filing in Part E of Form N-PORT that could explain any assumptions that funds made or context for seemingly anomalous responses. Any notes provided in public reports on Form N-PORT (*i.e.*, reports on Form N-PORT for the third month of the fund's fiscal quarter) will be publicly available, whereas notes provided in non-public filings of Form N-PORT will remain non-public. Moreover, to the extent that an explanatory note relates to a non-public item (e.g., miscellaneous securities, country of risk and economic exposure, or delta for individual options, warrants and convertible securities), it will remain non-public.

J. Exhibits (Section II.A.2.j)

Funds must attach as exhibits the fund's complete Regulation S-X-compliant portfolio holdings for reports filed at the end of the first and third quarters of a fund's fiscal year. In light of concerns ICI and other commenters raised regarding the time required to prepare, validate, and file these reports in accordance with Regulation S-X, the SEC will permit funds to file these schedules within 60 days after the end of the reporting period for the first and third fiscal quarters, rather than within 30 days after the end of the reporting period, as proposed.[\[4\]](#)

K. Non-Public Disclosures (Section II.B.4)

Many commenters, including ICI, raised concerns about the public disclosure of sensitive information on Form N-PORT. As discussed above, the SEC determined that the following items should remain non-public:

- Monthly filings on form N-PORT, except for filings for the third month of every fiscal quarter;
- Position-level risk metrics (delta);
- Country of risk and economic exposure; and
- Explanatory notes related to non-public items.

L. Certifications (Section II.B.2)

Because the SEC is rescinding Form N-Q, which requires principal executive and financial officers of the fund to make certifications relating to: (1) the accuracy of information reported; and (2) disclosure controls and procedures and internal control over financial reporting after the first and third fiscal quarters, the SEC is amending Form N-CSR, as proposed, to require each certifying officer to certify these items for the most recent half-year, rather than the registrant's most recent fiscal quarter as the form currently requires.

II. Regulation S-X

The amendments to Regulation S-X in large part require standardized, enhanced, and more prominent placement of derivatives disclosures in fund financial statements. Amendments to Articles 6 and 12 of Regulation S-X will: (1) require new, standardized disclosures regarding fund holdings in futures contracts, forward foreign currency contracts, swap contracts, and additional disclosures regarding fund holdings of written option contracts and purchased option contracts; (2) update the disclosures for other investments and

investments in and advances to affiliates; and (3) amend the rules regarding the form and content of fund financial statements.

The amendments re-number the current schedules in Article 12 and establish separate schedules for derivatives as described below.

Current Rules

New Rules

12-12 (Investments in securities of unaffiliated issuers)

12-12 (Investments in securities of unaffiliated issuers)

12-12A (Investments–securities sold short)

12-12A (Investments–securities sold short)

12-12B (Open option contracts written)

12-13 (Open option contracts written)*

12-12C (Summary schedule of investments in unaffiliated issuers)

12-12B (Summary schedule of investments in securities of unaffiliated issuers)*

12-13A (Open futures contracts)*

12-13B (Open forward foreign currency contracts)*

12-13 (Investments other than securities)

12-13C (Open swap contracts)*

12-13D (Investments other than those presented in 12-12, 12-12A, 12-12B, 12-13, 12-13A, 12-13B, and 12-13C)*

12-14 (Investments in and advances to affiliates)

12-14 (Investments in and advances to affiliates)

*Denotes new or renumbered schedule

A. Enhanced Derivatives Disclosures (Section II.C.2)

While current rules establish general requirements for portfolio holdings disclosures, they do not prescribe standardized information to be included for derivative instruments other than options. To address issues of inconsistent derivatives disclosures, the SEC amended Regulation S-X by adopting new schedules for futures contracts, forward foreign currency

contracts, and swap contracts. The amendments also modify the current disclosure requirements for purchased and written options

1. Open Option Contracts Written and Options Purchased

For each open option contract written, new Rule 12-13 requires funds to disclose: (1) description; (2) counterparty; (3) number of contracts; (4) notional amount; (5) exercise price; (6) expiration date; and (7) value. For options purchased, instruction three to Rule 12-12 (Investments in securities of unaffiliated issuers) requires presentation of all information required by new Rule 12-13. The rule specifies that the counterparty need not be disclosed for both exchange-traded and centrally cleared option contracts.

Rule 12-13 addresses disclosure for option contracts on an index or basket where the components are not publicly available as of the fund's balance sheet date. If the notional amount of the option contract does not exceed 1 percent of net asset value, the fund must identify the index or basket. If the notional amount of the contract exceeds 1 percent of net asset value, the fund must provide a description of the index and list separately: (1) the 50 largest components of the index or custom basket, and (2) any other components where the notional value for that component exceeds 1 percent of the total notional value of the index or basket. For each investment separately listed, the fund must include a description of the investment, the quantity held, the value at the close of the period, and the percentage value compared to the custom basket's net assets.

Consistent with ICI's recommendations, the final rules require funds to disclose non-public index components based on the summary schedule of investments reporting requirements (*i.e.*, the 50 largest components and any other components that exceed 1 percent of the notional value of the index) rather than all components, as originally proposed. This financial statement reporting requirement for option contracts on an index or basket where the components are not publicly available is different than the "tiered" reporting requirement adopted for Form N-PORT.

2. Open Futures Contracts

For each open futures contract, new Rule 12-13A requires funds to disclose: (1) description; (2) number of contracts; (3) expiration date; (4) notional amount; (5) value; and (6) unrealized appreciation/depreciation. The Commission had proposed a requirement that funds reconcile the total unrealized appreciation/depreciation amount to the total variation margin receivable/payable on the related balance sheet. The final rules omit this reconciliation requirement. New Rule 12-13A instructs funds to report the notional amount at the close of the period.

3. Open Forward Foreign Currency Contracts

For each open forward foreign currency contract, new Rule 12-13B requires funds to disclose: (1) amount and description of currency to be purchased; (2) amount and description of currency to be sold; (3) counterparty; (4) settlement date; and (5) unrealized appreciation/depreciation. The SEC notes that unrealized appreciation and unrealized depreciation may be presented in two separate columns, and encourages such presentation if it would assist in reconciling these amounts to the corresponding figures on the fund's balance sheet.

4. Open Swap Contracts

For each open swap contract, new Rule 12-13C requires funds to disclose: (1) description and terms of payments to be received; (2) description and terms of payments to be paid; (3) counterparty; (4) maturity date; (5) notional amount; (6) value; (7) upfront payments/receipts; and (8) unrealized appreciation/depreciation. The rule specifies that major categories of swaps are to be presented by descriptive title (e.g., credit default swaps, interest rate swaps, total return swaps) and that, within each major category, swaps with differing descriptions, counterparties, or maturity dates should be presented separately. The rule also specifies that the fund need not disclose the counterparty for both exchange-traded and centrally cleared swap contracts. Where the swap references an index or basket of investments whose components are not publicly available, the rule specifies the same reporting requirements as Rule 12-13.

5. Other Investments

Funds report investments not otherwise required to be reported under Article 12 on the schedule in existing Rule 12-13. Rule 12-13 is renumbered as Rule 12-13D and will require funds to disclose: (1) description; (2) balance held at close of period; and (3) value at close of period. Funds will use Rule 12-13D to report, among other things, investments in physical holdings, such as real estate or commodities.

B. Changes to Portfolio Schedules (Sections II.C.3 and II.C.4)

As proposed, the rules would have required funds to categorize the Schedule of Investments under Rule 12-12 by type of investment, the related industry, *and* the related country or geographic region. Consistent with ICI's recommendations, the final rules do not require a three-level categorization. Instead, funds will continue to categorize the Schedule of Investments by type of investment, and by the related industry, country *or* geographic region. The SEC notes, however, that GAAP requires disclosure of significant concentrations of credit risk.

As proposed, the rules would have required funds to disclose the reference rate and spread when disclosing the interest rate for variable rate securities. The final rules require disclosure of the reference rate and spread, and also the period-end rate. The final rules also require funds to identify securities where any portion of the holding is on loan.

Certain Article 12 schedules currently require funds to identify restricted securities. To maintain consistency with these existing requirements, the new schedules to Regulation S-X, as proposed, require funds to identify each investment that cannot be sold because of restrictions or conditions applicable to the investment.

The rules, as proposed, also require funds to identify any investment that was fair valued using significant unobservable inputs. In order to make "value" consistent with current Article 12, however, the amendments only refer to "value" (and not "fair value"), which is consistently used and defined under Regulation S-X. Accordingly, the final rules require funds to indicate if an investment's value was determined through significant unobservable inputs.

Several current Article 12 schedules require funds to provide tax basis disclosures for investments. As proposed, the rules would have extended this requirement to the new derivatives schedules and the schedule for securities sold short. ICI and others commented that tax basis disclosure for each of the different investment schedules would increase the volume and complexity of financial statement disclosure and recommended that funds

instead disclose the tax basis of the portfolio as a whole. The final rules omit the requirement to provide tax basis information for each of the Article 12 schedules and amend 6-03(h) of Regulation S-X to require tax basis information relating to the portfolio as a whole.^[5]

The proposed rules would have required each Article 12 schedule to identify by symbol each illiquid investment. In light of the portfolio-level liquidity reporting requirements in Form N-PORT, the Commission determined not to require identification of illiquid investments in the financial statements.

C. Investments in and Advances to Affiliates (Section II.C.5)

Rule 12-14 currently requires a fund to make certain disclosures about its investments in and advances to “affiliates” or companies in which the fund owns 5 percent or more of the outstanding voting securities. The rule currently requires that a fund disclose the “amount of equity in net profit and loss for the period” for each controlled company, but does not require disclosure of realized or unrealized gains or losses. As proposed, the rules omit the requirement to disclose “amount of equity in net profit and loss for the period” and instead require, for each affiliated investment, disclosure of (1) net realized gain or loss for the period, and (2) net increase or decrease in unrealized appreciation or depreciation for the period.

D. Form and Content of Financial Statements (Section II.C.6)

The final rules omit language from Rule 6-10(a) that certain funds may have relied upon to include information relating to derivatives in the notes to the financial statements. In order to increase the prominence of information relating to derivatives, the final rules explicitly mandate all schedules required by Rule 6-10—including the new derivatives schedules—be presented together within the fund’s financial statements, and not in the notes.

As proposed, the rules eliminate current Rule 6-04.4, which requires disclosure of “total investments” on the balance sheet under “assets.” This change recognizes that investments in derivatives potentially could be presented under both assets and liabilities on the balance sheet. The final rules make additional changes to Rule 6-04 to make clear that gross presentation of amounts relating to derivatives on the balance sheet is not required where netting is permitted under GAAP.

The proposed rules would have required new disclosures relating to securities lending activities in the notes to the financial statements. As discussed below, these proposed disclosures have been moved to a fund’s Statement of Additional Information (or, for closed-end funds, reports on Form N-CSR).

The proposed rules would have required funds to disclose payment-in-kind interest separately on the Statement of Operations. Consistent with ICI recommendations, the final rules require separate disclosure of payment-in-kind interest only if it exceeds 5 percent of investment income.

The Commission made several other changes to Regulation S-X, consistent with the proposed rules including: (1) requiring disclosure of realized gains/losses and change in unrealized appreciation/depreciation consistent with the new derivatives schedules in the Statement of Operations; (2) eliminating the written options roll-forward required by Rule 6-07.7(c); and (3) eliminating the exception in the Investments Other Than Securities

schedule that permits omission of the schedule if the investments amount to 1 percent or less of total investments.

III. Form N-CEN

New Form N-CEN will replace Form N-SAR and will require funds to report annually certain census-type information to the Commission. Form N-CEN will be filed by all funds, except face-amount certificate companies. It is divided into several parts, as follows:

- All funds required to file the form will complete Part A, which requires information about the reporting period covered by the report, and Part B, which requires certain background and other identifying information about the fund, as well as file any attachments required under Part G;
- All management companies, other than SBICs, will complete Part C;[\[6\]](#)
- Closed-end funds and SBICs will complete Part D;
- ETFs (including those that are UITs) will complete Part E; and
- UITs will complete Part F.

The Commission adopted Form N-CEN largely as proposed. Highlights from Form N-CEN, particularly those requirements that are not included in current Form N-SAR, are noted below. Some of the information currently required by Form N-SAR will still be required, but has been streamlined or reorganized on Form N-CEN, and is not noted below.

A. Part B of Form N-CEN (Section II.D.4.b)

Some of the new information requested in Part B includes:

- Information about fund directors, including each director's name, whether they are an "interested person," the Investment Company Act of 1940 file number of any other registered investment company for which they serve as a director, and a director's associated CRD number (if any);
- Information about fund CCOs, including the CCO's name, CRD number (if any), if the CCO has changed since the last filing, and the name and IRS Employer Identification Number of any person other than the fund or an affiliated person that compensates or employs the CCO for providing CCO services;
- The nature of and extent to which a fund's sponsor provides financial support to the fund (explicitly excluding certain routine transactions from the definition of "financial support" and clarifying that the purchase of a defaulted or devalued security will constitute "financial support" only when it is intended to increase or stabilize the liquidity of the fund's portfolio);
- Whether the fund relied on orders from the Commission granting the fund an exemption from the Investment Company Act, Securities Act of 1933, or Securities Exchange Act of 1934 during the reporting period;
- Whether, during the reporting period, an open-end fund made any payments to shareholders or reprocessed shareholder accounts as a result of an NAV error; and
- Payments of dividends or distributions that required a written statement pursuant to Section 19(a) of the Investment Company Act and Rule 19a-1 thereunder.

B. Part C of Form N-CEN (Section II.D.4.c)

Some of the new information requested in Part C includes:

- Management companies must identify if they are any of the following types of funds:

ETF or exchange-traded managed fund; index fund; fund seeking to achieve performance results that are a multiple of an index or other benchmark, the inverse of an index or other benchmark, or a multiple of the inverse of an index or other benchmark; interval fund; fund of funds; master-feeder fund; money market fund; target date fund; and underlying fund to a variable annuity or variable life insurance contract;

- Index funds will be required to report the fund's "tracking difference," the fund's "tracking error," whether the index is constructed by affiliated service providers, and whether the index is constructed exclusively for the fund;"[7]
- Management companies must identify if they invest in a controlled foreign corporation for the purposes of investing in certain types of instruments, such as commodities, including the name and LEI of the CFC, if any; and
- Additional securities lending information, including items asking (1) whether the fund is authorized to engage in securities lending transactions; (2) whether it loaned securities during the reporting period; (3) information about any defaults; (4) information about each securities lending agent; (5) information about indemnification arrangements; (6) information about collateral managers, including any affiliation with the fund's adviser; (7) types of payments made to securities lending agents and cash collateral managers;[8] and (8) net income from securities lending activities.[9]

In response to comments from ICI and others, the SEC narrowed the definition of "fund of funds" to exclude funds that acquire securities issued by another investment company solely in reliance on Rule 12d1-1. Also in response to comments from ICI and others, the SEC modified the securities lending reporting requirement regarding borrower default to focus on failures to return loaned securities that result in the fund (or its securities lending agent) having to liquidate collateral pledged to secure the loaned securities or the fund otherwise being adversely impacted. The SEC adopted ICI's recommendation that the Commission require funds to report whether they exercised their indemnification rights with respect to securities lending defaults.

C. Part D of Form N-CEN (Section II.D.4.d)

Some of the new information requested in Part D includes:

- Information related to rights offerings and secondary offerings by the closed-end fund or SBIC, including whether there was such an offering during the reporting period and, if so, the type of security involved.

Form N-CEN also requires closed-end funds to report the fund's advisory fee as of the end of the reporting period as a percentage of net assets—a requirement that ICI and other commenters supported.

D. Part E of Form N-CEN (Section II.D.4)

Some of the new information requested in Part E includes:

- Identifying information about an ETF's authorized participants and certain other identifying information, including the authorized participant's SEC file number;
- The dollar value of the ETF shares the authorized participant purchased and redeemed from the ETF during the reporting period;
- Whether an ETF required that an authorized participant post collateral to the ETF or any of its designated service providers in connection with the purchase or redemption of ETF shares during the reporting period;

- Summary information about certain characteristics of creation units and primary market transactions based on the dollar value paid for each creation unit purchased or the total dollar value of creation units redeemed by authorized participants during the reporting period – (i) the average percentage of that value composed of cash; (ii) the standard deviation of the percentage of that value composed of cash; (iii) the average percentage of that value composed of non-cash assets and other positions exchanged on an in-kind basis; and (iv) the standard deviation of the percentage of that value composed of non-cash assets and other positions exchanged on an in-kind basis;
- As to creation units purchased or redeemed by authorized participants during the reporting period, the average transaction fee (i) charged in dollars per creation unit; (ii) charged for one or more creation units on the same business day; and (iii) charged as a percentage of the value of the creation unit;
- As to only those creation units purchased or redeemed by authorized participants, where the creation units were fully or partially composed of cash, the average transaction fee (i) charged in dollars per creation unit; (ii) charged for one or more creation units on the same business day; and (iii) charged as a percentage of the value of the cash in the creation unit;
- The number of ETF shares required to form a creation unit as of the last business day of the reporting period; and
- For ETFs that are UITs, information regarding tracking difference and tracking error.

E. Part F of Form N-CEN (Section II.D.4.f)

Some of the new information requested in Part F includes:

- Whether a UIT is a separate account of an insurance company and, if so, new information for separate accounts offering variable annuity and variable life insurance contracts including:
 1. The name of the security;
 2. Contract identification number;
 3. Total assets attributable to the security;
 4. Number of contracts sold;
 5. Gross premiums received;
 6. Information relating to Section 1035 exchanges, including gross premiums received pursuant to Section 1035 exchanges, number of contracts affected in connection with such premiums, amount of contract value redeemed pursuant to Section 1035 redemptions and the number of contracts affected by such redemptions; and
 7. Information about reliance on exemptive Rules 6c-7 and 11a-2 under the Investment Company Act.

F. Reporting of Information (Section II.D.3)

Funds must file Form N-CEN annually, 75 days after the end of the fiscal year. The SEC extended the filing period from 60 to 75 days based on comments from ICI and others. Funds with multiple series with different fiscal year ends must file a report as of each fiscal year end, reporting only on the series with that fiscal year end. UITs will file Form N-CEN on a calendar year basis, with a filing period of 75 days.

IV. Form Amendments Regarding Securities Lending Activities

The SEC adopted form amendments that require management investment companies to disclose in their Statements of Additional Information (or, in the case of closed-end funds, their reports on Form N-CSR) certain information regarding securities lending income and fees. Funds must provide this information in tabular format to enhance comparability. The table requires funds to provide: (1) gross income from securities lending; (2) fees and compensation the fund pays for securities lending activities and related services, classified by: (a) fees paid to the securities lending agent from a revenue split, (b) fees paid for cash collateral management services, (c) administrative fees not included in revenue split, (d) indemnification fee not included in revenue split, (e) rebate (paid to borrower), and (f) other fees not included in revenue split; (3) aggregate fees/compensation for securities lending activities; and (4) net income from securities lending activities.

The SEC will require funds to publicly disclose securities lending agent compensation, contrary to comments from ICI and others that this information should be kept non-public by the Commission because it is sensitive information and its public disclosure could impede the ability of a fund to negotiate the most competitive rates with securities lending agents. The SEC, however, reasoned that these concerns would be addressed to some degree by its elimination of certain of the more sensitive disclosures proposed – specifically, the terms of the revenue split and the terms governing the compensation of securities lending agents more generally. Additionally, the SEC moved the securities lending income and fees disclosure from the financial statements, as proposed, to the SAI and Form N-CSR to alleviate concerns about cost and lengthy disclosure in a fund's financial statements.

V. Compliance Dates

Compliance dates for the various requirements are as follows:

- *Form N-PORT*
 - Funds that are part of a group of related investment companies that has net assets of \$1 billion or more as of the end of the most recent fiscal year must comply with the Form N-PORT filing requirements by June 1, 2018.
 - Other funds must comply by June 1, 2019.
 - All Form N-PORT filings for the first six months following June 1, 2018 will remain non-public, however, portfolio information attached as exhibits to Form N-PORT for the first and third quarters of a fund's fiscal year will be made public during this period.
- *Regulation S-X (and N-1A and N-CSR changes)*
 - Funds must comply with the Regulation S-X changes and conforming amendments, including the amendments to the Statement of Additional Information (and the Form N-CSR for closed-end funds, by August 1, 2017.
- *Form N-CEN*
 - Funds must comply with the Form N-CEN filing requirements by June 1, 2018.
- *Form N-CSR*
 - Funds that are part of a group of related investment companies that has net assets of \$1 billion or more as of the end of the most recent fiscal year must comply with the amended certification requirement for Form N-CSR on June 1, 2018.
 - Other funds must comply by June 1, 2019.

- Funds must comply with the modified reporting requirement to file as an exhibit to Form N-CSR the letter reporting a change in independent registered public accounts by June 1, 2018.
- *Form N-Q and N-SAR*
 - Form N-Q will be rescinded on August 1, 2019.
 - Form N-SAR will be rescinded on June 1, 2018.

VI. ICI Activity in Connection with New Fund Requirements

The new reporting rules (together with liquidity risk management rules that the SEC adopted the same day) will bring about significant changes for the fund industry. To assist members in analyzing and implementing them, ICI will:

- Host a one-day conference on November 17 in Boston, at which we will cover these new requirements in depth. We will be joined by senior SEC staff. Information about this event and registration can be found at www.ici.org/events/upcoming/conf_16_sec_rules.
- Devote panels to these subjects at ICI's Securities Law Developments Conference in Arlington, VA (outside Washington, D.C.) on December 6. We will be joined by senior SEC staff. Information about this event and registration can be found at www.ici.org/events/upcoming/conf_16_seclaw.

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endnotes

[1] See Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (Oct. 13, 2016), available at <https://www.sec.gov/rules/final/2016/33-10231.pdf>. For a high-level summary of the final rules, please see ICI Memorandum No. 30316, dated Oct. 14, 2016, available at https://www.ici.org/my_ici/memorandum/memo30316. For a description of the Commission's proposed rules, please see ICI Memorandum No. 29036, dated (May 28, 2015), available at https://www.ici.org/my_ici/memorandum/memo29036.

[2] Form N-Q currently is used for filing portfolio holdings after a fund's first and third fiscal quarters. Form N-SAR currently is used for filing financial and other information about a fund and its service providers.

[3] Section references refer to sections in the adopting release.

[4] Funds still must file the Form N-PORT 30 days after month end. A fund, however, would be permitted to attach the portfolio holdings exhibit within 60 days after the end of the reporting period.

[5] Specifically, funds must disclose the following amounts based on cost for federal tax purposes: a) aggregate gross unrealized appreciation for all investments in which there is an excess of value over tax cost, b) the aggregate gross unrealized depreciation for all investments in which there is an excess of tax cost over value, c) the net unrealized appreciation or depreciation, and d) the aggregate cost of investments for Federal income tax purposes.

[6] Funds offering multiple series will be required to report information in Part C of the form as to each series separately, even if some information is the same for two or more series.

[7] The “tracking difference” data item refers to the annualized difference between an index fund’s total return during the reporting period and the index’s return during the reporting period, and the “tracking error” data item refers to the annualized standard deviation of the daily difference between an index fund’s total return and the index’s return during the reporting period.

[8] Specifically, the fund will be required to disclose whether the adviser has made any of the following payments: a revenue sharing split, non-revenue sharing split (other than an administrative fee), administrative fee, cash collateral reinvestment fee, and indemnification fee, to one or more securities lending agents or cash collateral managers during the reporting period.

[9] The SEC initially had proposed requiring disclosure of this information in fund financial statements pursuant to proposed amendments to Regulation S-X.