

MEMO# 31022

January 12, 2018

SEC Staff Issues Liquidity Rule FAQs

[31022]

January 12, 2018 TO: ICI Members
Investment Company Directors SUBJECTS: Compliance
Disclosure
Exchange-Traded Funds (ETFs)
Fund Accounting & Financial Reporting
Fund Governance
Investment Advisers
Operations
Portfolio Oversight
Risk Oversight
Transfer Agency RE: SEC Staff Issues Liquidity Rule FAQs

Following the SEC's adoption of the liquidity rule and related reporting requirement in October 2016,[\[1\]](#) the SEC's staff of the Division of Investment Management issued liquidity rule FAQs on January 10.[\[2\]](#)

The FAQs relate primarily to sub-advised funds and ETFs, fund types with unique interpretive and implementation issues under the rule. The FAQs' preamble states that the staff "expects to update this document from time to time to include responses to additional questions."

Among other things, the sub-advised fund FAQs address delegations of responsibilities; responsibilities of advisers and sub-advisers; diversity of liquidity risk management practices among funds, advisers, and sub-advisers; factors that may give rise to differences in liquidity classifications of the same investment; how funds should address differences in judgment of advisers and sub-advisers about liquidity classifications; how funds with a "manager-of-managers" structure may approach liquidity classifications for compliance purposes; and how funds must report liquidity classifications on Form N-PORT.

The ETF FAQs relate primarily to the rule's definition of "in-kind ETF," particularly its requirement that cash used in redemptions be *de minimis*. Among other things, the FAQs address cash that may be excluded from an ETF's definition and testing of its *de minimis* amount; when an ETF that loses its "in-kind" status should come into compliance with all additional rule requirements; cash in redemptions that the staff views as reasonable *de minimis* amounts; circumstances under which an all-cash redemption may not preclude an ETF from qualifying as an "in-kind ETF;" acceptable approaches to testing whether cash usage is *de minimis*; how an ETF that has lost its "in-kind" status may re-qualify; and how

ETFs may consider forward-looking factors in determining qualification as “in-kind.”

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endnotes

[1] *Investment Company Liquidity Risk Management Programs*, SEC Release No. IC-32315 (Oct. 13, 2016), available at www.sec.gov/rules/final/2016/33-10233.pdf. See Institute [Memorandum No. 30334](#), dated October 21, 2016, for a detailed summary of the liquidity risk management program rule and related reporting requirements.

[2] Available at:
www.sec.gov/investment/investment-company-liquidity-risk-management-programs-faq.

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