

**MEMO# 35815**

September 4, 2024

# **SEC Adopts Amendments to Forms N-PORT and N-CEN; Issues Guidance on Liquidity Risk Management Programs**

[35815]

September 04, 2024

TO: ICI Members

Investment Company Directors SUBJECTS: Closed-End Funds

Compliance

Disclosure

Exchange-Traded Funds (ETFs)

Fund Accounting & Financial Reporting

Operations

Portfolio Oversight RE: SEC Adopts Amendments to Forms N-PORT and N-CEN; Issues Guidance on Liquidity Risk Management Programs

Last week, the SEC adopted amendments to fund reporting requirements on Forms N-PORT and N-CEN and issued guidance on open-end funds' liquidity risk management programs.[\[1\]](#) The reporting requirements will:

- Increase the filing and publication frequency of Form N-PORT information;
- Amend the reporting periods covered by certain Form N-PORT items;
- Clarify entity identifier information on both Forms N-PORT and N-CEN; and
- Require new information about liquidity classification providers on Form N-CEN.

The guidance on liquidity risk management program requirements under Rule 22e-4 under the Investment Company Act of 1940 (the "liquidity rule") addresses issues related to:

- The frequency of classifying the liquidity of fund investments;
- The meaning of "cash"; and
- Determining and reviewing highly liquid investment minimums (HLIMs).

Importantly, per ICI's strong recommendations, the Commission did not adopt proposed amendments that would have required a fund to attach a monthly Schedule of Investments that complies with generally accepted accounting principles to each Form N-PORT; required an open-end fund to provide information regarding the aggregate percentage of its portfolio represented in certain liquidity buckets; and required an open-end fund to provide

additional swing-pricing related reporting and disclosure.

The amendments become effective on November 17, 2025. Funds generally must comply with the amendments for Form N-PORT and N-CEN reports filed on or after that date. Fund groups with net assets of less than \$1 billion will have until May 18, 2026 to comply with the Form N-PORT requirements. We summarize the amendments in four sections below discussing (1) Changes to Form N-PORT; (2) Changes to Form N-CEN; (3) Liquidity Risk Management Program Guidance; and (4) Proposed Changes That Were Not Adopted.

## **Changes to Form N-PORT**

The Form N-PORT amendments (a) increase the filing and publication frequency of each Form N-PORT filing, (b) amend the reporting periods covered by certain items, and (c) clarify entity identifier information.[\[2\]](#)

### **Form N-PORT Filing Frequency**

The amendments require a fund to file each Form N-PORT within 30 days after the end of a month and remove the requirement that a fund maintain in its records the information that is required to be included on Form N-PORT no later than 30 days after the end of each month.[\[3\]](#) Currently, a fund files a Form N-PORT for each month of a fiscal quarter within 60 days after the end of the fiscal quarter. The fund also must retain information for each Form N-PORT that it does not file within 30 days after the end of a month, making such information available to the Commission upon request.

The Commission adopted the changes as proposed to receive more frequent and timely Form N-PORT information to enable it to conduct more targeted and timely monitoring; analyze risks and trends more accurately; and better assess the potential impacts of market events and stress affecting particular issuers, asset classes, counterparties, or market participants. It cited instances in which delays in receiving information impeded the Commission's ability to assess the impact of an event on markets, funds, and fund investments (e.g., from COVID-19, the Russian invasion of Ukraine, and on the transition away from using the London Interbank Offered Rate (LIBOR)).[\[4\]](#)

Consistent with its proposed changes, the Commission will require a fund to file each Form N-PORT within 30 days after the end of a month, despite ICI and other commenters' recommendations to give funds at least 45 days after month end to file the form. Although the Commission acknowledged the difficulties in aggregating, reviewing, preparing, and filing the information within a 30-day period and the potential increased risk for errors, it proceeded with the proposed change to ensure that it receives the information on a timely basis. It noted that current efforts to obtain timely information through individual requests for N-PORT data are limited, as the Commission does not have the data necessary to determine which funds to prioritize and that more fulsome data is needed to effectively analyze the impact of certain market events. The Commission also noted that, when it initially adopted Form N-PORT, it required filings to be made within 30 days after a month end before a subsequent reevaluation of its cybersecurity defenses led to the current quarterly filing cadence.[\[5\]](#) In addition, the Commission rejected commenters' assertions that its retention of confidential Form N-PORT information for longer periods increases the chances of misappropriation, countering that it has improved its cybersecurity defenses to better protect that data.[\[6\]](#) The Commission also cited its belief that there is not a significant burden difference between maintaining required information in a fund's records and filing that information on Form N-PORT.[\[7\]](#) On the whole, the Commission felt that reporting monthly information within 30 days of month end appropriately balances the

competing concerns of costs and potential for errors in the filed information with the utility of the information for staff oversight and monitoring activities.

### **Form N-PORT Filing Publication Frequency**

The amendments will make each Form N-PORT public 60 days after the end of such month.[\[8\]](#) Currently, only information from the Form N-PORT for the third month of each fiscal quarter is made public. Thus, the number of Form N-PORTs that each fund makes public will increase from four to twelve per year.

The SEC determined to increase the number of Form N-PORT filings made public to assist investors in making more informed investment decisions. For example, the Commission noted that portfolio holdings information can help investors assess the extent to which their funds have portfolios that overlap or how funds comply or deviate from investment objectives. In addition, it asserted that investors may benefit from third-party analysis of the information that is provided to fund investors or through third-party assistance to investors in selecting fund investments.

The Commission discounted concerns from commenters, such as ICI and several of our members, that increased portfolio holdings disclosures could lead to predatory trading, such as "front running," "free riding," and reverse engineering.[\[9\]](#) It noted that many funds voluntarily disclose their monthly portfolio holdings on their websites or through third-party data aggregators, already making additional portfolio information available to assist investors with their investment decisions.[\[10\]](#)

Further, it states that mitigating factors will limit the impact of predatory trading. In particular, it notes that the 60-day delay in publicizing the data will help deter predatory trading, as it will allow funds to begin acquiring or disposing of positions two months before those positions are publicly disclosed. It notes that this period could expand to nearly three months if the fund acquires or disposes of the positions in the beginning of a given month. In addition, it states that funds could use the "miscellaneous securities" classification on Form N-PORT to build new positions. This classification allows funds to build positions that do not exceed five percent of a fund and that have not been previously disclosed to the public to report an aggregate amount of securities as "miscellaneous securities"—portfolio investments that are not individually identified to the public.

It added that the Investment Company Act requires that the Commission make all information filed public unless the Commission determines that the information is neither necessary nor appropriate in the public interest or for the protections of investors.[\[11\]](#) Although the Commission has previously made the determination that disclosing the Form N-PORT information for the first and second month of a fiscal quarter was neither necessary nor appropriate in the public interest or for the protection of investors multiple times, it declined to do so again.[\[12\]](#)

Thus, the Commission determined that the publication of information collected monthly on each Form N-PORT with a 60-day delay appropriately balances the benefits to investors of receiving additional data on portfolio holdings while mitigating the concerns raised about predatory trading.

### **Other Form N-PORT Amendments**

In addition to adopting amendments to the filing and publication frequency of Form N-

PORT, the Commission adopted two conforming amendments that align the periods covered by an item to the increased publicity of each Form N-PORT. It also adopted changes to certain items and definitions related to entity identifiers.

First, because each month's Form N-PORT now will be public instead of only the third month of a fiscal quarter, the amendments will require funds to report return and flow information, including net realized gain (loss) and net change in unrealized appreciation (or depreciation), only for the month that the filing covers rather than the previously required preceding three months.[\[13\]](#)

Similarly, amended Part D of Form N-PORT allows funds to publicly report an aggregate amount of up to five percent of miscellaneous securities monthly, with detailed information about those individual holdings remaining private.[\[14\]](#) Previously, this was only required to be done quarterly because the first and second months of a fiscal quarter were not publicly disclosed and there was no need for a fund to designate any of its investments as miscellaneous securities for those reporting periods.

In addition, the Commission adopted amendments to entity identifier items and definitions. The current definition of legal entity identifier (LEI) notes that for an entity that does not have an LEI, it should report the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if available. The definition now eliminates that note and asks funds to clarify whether they are reporting an LEI or an RSSD ID, if available. This will help the Commission improve consistency and comparability.

## **Changes to Form N-CEN**

Amended Form N-CEN will require funds that are subject to the liquidity rule to identify and provide certain information about liquidity classification service providers.[\[15\]](#) The amendments also make similar changes to entity identifiers in Form N-CEN that it made to Form N-PORT.

The amendments will require a fund to:

- Name each liquidity classification service provider;
- Provide identifying information, including the LEI, if available, and location, for each liquidity classification service provider;
- Identify if the liquidity classification service provider is affiliated with the fund or its investment adviser;
- Identify the asset classes for which that liquidity classification service provider provided classifications; and
- Indicate whether the liquidity classification service provider was hired or terminated during the reporting period.[\[16\]](#)

The Commission believes this information will help them better understand potential trends or outliers in funds' liquidity classifications.

Consistent with the amendments to the definition of LEI in Form N-PORT, the Commission also made similar changes in Form N-CEN to separate the concepts of LEIs and RSSD IDs.

## **Liquidity Risk Management Program Guidance**

Although the Commission did not adopt any amendments to the liquidity rule at this time, it

issued guidance relating to (a) the frequency of classifying the liquidity of fund investments, (b) the meaning of "cash" in the rule, and (c) determining and reviewing HLIMs.

## **Frequency of Classification**

The liquidity rule requires funds to review liquidity classifications more frequently than monthly if a fund reasonably expects that market, trading, and investment-specific considerations will materially affect one or more of the fund's investment classifications.<sup>[17]</sup> Based on outreach, however, the staff observed multiple instances where funds were unprepared to review classifications intra-month.

The Commission states that a fund generally should design policies and procedures to identify the types of information it will use to identify relevant changes and review liquidity classifications intra-month, as well as the timeliness of that information. The Commission notes that it previously has provided examples of changes in market, trading, and investment-specific considerations that funds may wish to consider. It adds that funds generally should consider reviewing relevant liquidity classifications intra-month if:

- changes in portfolio composition are reasonably expected to materially affect one or more investment classifications (e.g., if a fund substantially increases the size of a position); and
- newly acquired investments are reasonably expected to result in material changes to the liquidity profile of a fund (especially if the change may cause a fund to fall below its HLIM or exceed the rule's 15% limit on illiquid investments).

## **Meaning of "Cash"**

The liquidity rule requires a fund to consider the time in which it reasonably expects an investment to be "convertible to cash" without significantly changing the market value of the investment.<sup>[18]</sup> The Commission has previously stated that "cash" under the rule means U.S. dollars and not foreign currencies, so funds must consider conversion to U.S. dollars when classifying an investment, including for foreign currency investments that must be converted to U.S. dollars.

For conversion of foreign currency investments, the Commission states that a fund must consider the amount of time it is reasonably expected to take to convert a reasonably anticipated trade size of that currency into U.S. dollars under current market conditions without significantly changing the currency exchange rate. This should include a consideration of the presence of currency controls, whether there is an active market in forward or spot contracts exchanging the foreign currency for U.S. dollars, and any delays in currency conversions due to market structure or operations.

The Commission also notes that funds should not base liquidity determinations in foreign investments on the ability to exit the investment into the local currency, without also considering the ability to convert the local currency into U.S. dollars. In so doing, funds must consider: (1) reasonable expectations of the time in which an international non-currency investment can be sold and settled in the local market without significantly changing the investment's market value; and (2) reasonable expectations of the time to convert the foreign currency into U.S. dollars without significantly impacting the currency exchange rate. Importantly, a fund can assume that the currency conversion begins at the same time as the sale of the international investment.

The guidance states that, if currency controls are implemented, then holdings of the local currency could become illiquid if the currency cannot be converted into U.S. dollars within seven calendar days. In addition, other investments that would be sold or disposed of in exchange for the illiquid local currency also should be classified as illiquid. The guidance recognizes that funds may need to sell illiquid investments to reduce the illiquidity of the fund's portfolio in exchange for illiquid local currencies. In so doing, however, the Commission notes that it generally would not view the acquisition of the illiquid currency to violate the liquidity rule's prohibition on acquiring illiquid investments in excess of the rule's 15% limit. If, however, the fund uses the illiquid currency to acquire investments that are also illiquid, then that would be inconsistent with the rule's prohibition.

## **HLIMs**

The liquidity rule requires funds that do not primarily hold assets that are highly liquid to determine and periodically review an HLIM,[\[19\]](#) and the SEC has previously issued guidance on how a fund should determine its HLIM. The Commission reiterates certain of that guidance—that a fund should have an HLIM that considers its particular liquidity risk factors, especially for funds on the lower end of the liquidity spectrum. For example, bank loan funds or funds with greater flow volatility should consider establishing higher HLIMs than more liquid or less volatile funds.

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 setting an HLIM, liquidity risk management is better conducted through portfolio construction.

Finally, the guidance concludes by noting that the Commission is not dictating how a portfolio manager should meet redemptions. For example, it notes that funds are not required to use or primarily use its most liquid investments to meet shareholder redemptions or that a fund must continuously maintain a specific level of highly liquid assets that it cannot use to meet redemptions. Instead, it reiterates that the only consequence under the liquidity rule of a fund dropping below its HLIM is the triggering of the fund's shortfall procedures, including notifying the fund's board of the shortfall and possibly the SEC (depending on its length).

## **Proposed Changes That Were Not Adopted**

Consistent with ICI's strong recommendations, the Commission did not adopt three major changes that were proposed.

First, the Commission agreed with numerous commentators, including ICI, that noted that requiring a fund to attach its complete portfolio holdings in accordance with generally accepted accounting principles and Regulation S-X within 60 days after the end of each month would impose significant burdens and costs to funds and their shareholders, with no commensurate benefits to shareholders.[\[20\]](#) In deciding to forego amendments requiring these changes, the Commission noted that the comments submitted raised issues that merit additional consideration before any final Commission action, including that the requirements may not justify the burdens, given the costs and time involved and the other sources of portfolio information available to investors.

Second, the Commission did not add any reporting or disclosure that would have required an open-end fund to provide information regarding the aggregate percentage of its portfolio in each of the liquidity buckets.



Finally, the Commission did not adopt any swing-pricing related reporting or disclosure amendments.

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## Notes

[1] Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs, Inv. Co. Act Rel. No. 35308 (Aug. 28, 2024) ("Adopting Release"), available at <https://www.sec.gov/files/rules/final/2024/ic-35308.pdf>. The Commission adopted the amendments by a 3-2 vote. Chair Gensler and Commissioners Crenshaw and Lizárraga voted for the amendments, and Commissioners Peirce and Uyeda voted against them. Unless otherwise noted, we use the term "fund" in this memo to describe registered open-end funds, registered closed-end funds, and registered exchange-traded funds that are required to file on Form N-PORT. It does not include money market funds and small business investment companies that are not required to file on Form N-PORT. In the context of Form N-CEN, the term "fund" generally includes registrants that are required to report on Form N-CEN, which in addition the registrants required to report on Form N-PORT include money market funds, small business investment companies, and registered unit investment trusts. In the context of the liquidity risk management program guidance, the term "fund" generally refers to open-end funds (excluding money market funds).

[2] Form N-PORT provides monthly information about a fund's complete portfolio holdings, as well as related information to help assess a fund's risks, including investment risk (e.g., interest rate risk, credit risk, and volatility risk), liquidity risk, counterparty risk, and leverage.

[3] See Rule 30b1-9 under the Investment Company Act.

[4] For example, under the current system, information about the first month of a fund's fiscal quarter may not be filed until 60 days after the end of the fiscal quarter, making it approximately 120 days stale.

[5] In 2016, the Commission adopted new Form N-PORT, requiring funds to file these monthly reports within 30 days after the end of each month because more delayed data would reduce the utility of the information and lag times of more than 30 days would overlap with preparation time. See Investment Company Reporting Modernization, Inv. Co. Act Rel. No. 32314, 81 Fed. Reg. 81870 (Nov. 18, 2016) ("Reporting Modernization Adopting Release"), available at <https://www.govinfo.gov/content/pkg/FR-2016-11-18/pdf/2016-25349.pdf>. In 2019, however, as part of an assessment of its internal cybersecurity risk, the Commission determined to postpone the initial reporting of Form N-PORT by nine months, and subsequently adopted

an interim final rule to require quarterly filing of monthly information within 60 days of quarter-end. See Amendments to the Timing Requirements for Filing Reports on Form N-PORT, Inv. Co. Act Rel. No. 33384, 84 Fed. Reg. 7980 (Mar. 6, 2019), available at <https://www.govinfo.gov/content/pkg/FR-2019-03-06/pdf/2019-03958.pdf>.

[6] We note, however, that the most recent report from the SEC's Office of Inspector General indicates that the Commission must make several enhancements in order to simply be deemed effective under the Federal Information Security Modernization Act reporting metrics for agency information security programs. See SEC Office of Inspector General, Fiscal Year 2023 Independent Evaluation of the U.S. Securities and Exchange Commission's Implementation of the Federal Information Security Act of 2014 (Dec. 20, 2023) (Redacted for Public Release) at 2, available at <https://www.sec.gov/files/fy-2023-independent-evaluation-sec-implementation-fisma-2014-report-no-580.pdf>.

[7] As we noted in our comment letter, ICI disagrees with this view, recognizing that it may take several days to prepare and provide new Form N-PORT filings in an Extensible Markup Language (XML)/structured data format. See Letter from Eric J. Pan, President and CEO, ICI, to Vanessa Countryman, Secretary, SEC, dated February 14, 2023, at 87-90, available at <https://www.sec.gov/comments/s7-26-22/s72622-20157306-325651.pdf>.

[8] As proposed, the amendments do not change the publication of certain nonpublic information currently reported on Form N-PORT, and that information would remain nonpublic (e.g., information with respect to a fund's HLIM, derivatives transactions, country of risk and economic exposure, delta, liquidity classifications for individual portfolio investments, miscellaneous securities, or explanatory notes related to any of those topics). See General Instruction F of Amended Form N-PORT.

[9] More portfolio disclosure may allow professional traders to trade ahead of (or "front run") funds. Increased holdings disclosure also facilitates the ability of outside investors to "free ride" on a fund's investment research by allowing those investors to reverse engineer and "copycat" the fund's investment strategies, obtaining for free the benefits of fund research and investment strategies that fund shareholders pay for. The Commission has previously noted that "front running" could reduce the profitability of funds by increasing the prices at which funds purchase securities and by decreasing the prices at which funds sell the securities, reducing the returns to shareholders. See Reporting Modernization Adopting Release at 81977. It added that "free riding" reduces the potential benefit of developing new investment strategies and engaging in proprietary market research, reducing the ability of investment companies with longer investment horizons to benefit from researching investment opportunities and developing new strategies. *Id.*

[10] The SEC estimates that, as of year-end 2019, approximately 56 percent of U.S. equity mutual funds' portfolio disclosures were voluntary monthly disclosures. See Adopting Release at n. 109.

[11] See Section 45(a) of the Investment Company Act.

[12] See, e.g., Reporting Modernization Adopting Release at 81908-10, 81977-78 (finding that disclosing portfolio holdings for the first and second months of a fiscal quarter are neither necessary nor appropriate in the public interest under Section 45(a) of the Investment Company Act and that increased portfolio holdings disclosure could lead to predatory trading and shareholder harm).



[\[13\]](#) See Items B.5 and B.6 of Amended Form N-PORT.

[\[14\]](#) See Part D of Amended Form N-PORT.

[\[15\]](#) Registered investment companies, other than face-amount certificate companies, must report census-type information to the Commission annually on Form N-CEN.

[\[16\]](#) See Item C.22 of Amended Form N-CEN.

[\[17\]](#) See Rule 22e-4(b)(1)(ii).

[\[18\]](#) See Rule 22e-4(a)(3) and the definitions for "highly liquid investment" and "moderately liquid investment."

[\[19\]](#) See Rule 22e-4(b)(1)(iii).

[\[20\]](#) Funds now provide GAAP-compliant/Regulation S-X Schedules of Portfolio Investments for the last month of each fiscal quarter in Form N-PORTs at the end of the first and third fiscal quarters and as part of annual and semi-annual reports for the second and fourth fiscal quarters.