

September 12, 2024

SEC Issues Liquidity Rule Guidance and Adopts Amendments to Forms N-PORT and N-CEN

The Final Amendments Restore More Frequent Reporting of Form N-PORT Information to the SEC, Establish More Frequent Public Disclosure and Introduce New Reporting Requirements in Connection with Liquidity Service Providers

SUMMARY

On August 28, 2024, the Securities and Exchange Commission (the “SEC”) voted 3-2 (Commissioners Peirce and Uyeda dissenting) to adopt amendments to reporting requirements for certain registered investment companies (“funds”), including registered open-end funds, registered closed-end funds and unit investment trusts, on Form N-PORT and Form N-CEN (the “Final Amendments”), as well as to provide guidance related to compliance with rule 22e-4 under the Investment Company Act of 1940 (the “Act”), also known as the liquidity rule (the “Liquidity Rule”), which governs open-end fund liquidity risk management.¹ The compliance date for the Final Amendments is November 17, 2025, with the exception of the Form N-PORT amendments for fund groups with net assets of less than \$1 billion as of the most recent fiscal year, which have a compliance date of May 18, 2026.²

The Final Amendments were part of the SEC’s November 2, 2022 proposal to significantly amend the Liquidity Rule and rule 22c-1 under the Act to mandate swing pricing (the “Proposing Release”), which we summarized and discussed in [our publication](#) dated November 28, 2022.³ The Final Amendments to Forms N-PORT and N-CEN were adopted substantially as proposed. While the SEC did not adopt the more controversial aspects of the proposal, namely the mandatory swing pricing requirements,⁴ Commissioners Peirce and Uyeda raised concerns with the Final Amendments. Commissioner Peirce stated that the benefits of the Final Amendments do not outweigh the costs, noting that “the Commission oversells the

benefits of today's amendments and gives too little attention to the costs."⁵ Meanwhile Commissioner Uyeda raised concerns regarding predatory trading, commenting that "public disclosure of Form N-PORT data raises the risk of predatory trading, where the manager's careful investment decisions can be easily and cheaply copied."⁶

Although the SEC adopted the Final Amendments, it is important to note that the SEC's rulemaking agenda notes that the Division of Investment Management is considering recommending that the SEC re-propose changes to regulatory requirements relating to open-end funds' liquidity and dilution management as well as further amendments to Forms N-PORT and N-CEN.⁷

AMENDMENTS TO FORM N-PORT

The Final Amendments will result in more frequent reporting of Form N-PORT information to the SEC and more frequent public disclosure of some of such information. The SEC believes that the amendments "will improve regulatory oversight of funds' activities and benefit market participants by increasing transparency of funds' portfolio data"⁸ and "enhance the ability of investors to review and monitor information about their funds' portfolios and aid them in making more efficient portfolio allocation decisions."⁹ Certain information reported on Form N-PORT, such as information regarding liquidity and the use of derivatives, will remain confidential.¹⁰ To justify the reduction in the delay in Form N-PORT reporting, the SEC cited market stresses such as the COVID-19 pandemic and Russia's invasion of Ukraine, claiming that the delayed quarterly reporting of information on Form N-PORT has "limited the Commission's ability to develop a timely and more complete understanding of the market."¹¹

- *Filing Frequency.* In 2019, the SEC adopted an interim final rule which required funds to file monthly reports with the SEC on a quarterly basis, with the reports due 60 days after the end of the fiscal quarter.¹² The Final Amendments to rule 30b1-9 and Form N-PORT will require funds to file Form N-PORT reports on a monthly basis within 30 days of the end of the month.¹³
- *Publication Frequency.* As adopted in 2016, certain portions of Form N-PORT for the third month of every quarter were made available to the public 60 days after the end of the quarter.¹⁴ Under the Final Amendments, certain portions of funds' monthly reports on Form N-PORT now will be made public 60 days after the end of the month.¹⁵

Commenters on the proposal objected to the publication of each month's Form N-PORT rather than every third month, stating that the increased frequency of publication "could increase the risk of predatory trading by other market participants."¹⁶ Other commenters stated that fund holdings were already publicly available and that a 60-day delay in publication would result in stale data.¹⁷ Nonetheless, the SEC adopted the Final Amendments substantially as proposed.¹⁸

The Final Amendments also amended the definition of legal entity identifier ("LEI") in Form N-PORT "to remove the language that if a financial institution does not have an assigned LEI, it should instead disclose the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve

System, if any.”¹⁹ Instead of classifying an RSSD ID as an LEI, funds are now required “to identify specifically whether they are reporting an LEI or an RSSD ID, if available.”²⁰

AMENDMENTS TO FORM N-CEN

The Final Amendments require funds subject to the Liquidity Rule to identify and provide certain information about the service providers the fund uses to fulfill the requirements of the Liquidity Rule on Form N-CEN.²¹ Specifically, funds will be required to:

- (1) name each liquidity service provider;
- (2) provide identifying information, including the LEI, if available, and location, for each liquidity service provider;
- (3) identify if the liquidity service provider is affiliated with the fund or its investment adviser;
- (4) identify the asset classes for which that liquidity service provider provided classifications; and
- (5) indicate whether the service provider was hired or terminated during the reporting period.²²

The SEC asserted that this information will allow the SEC and other participants to track certain liquidity risk management practices and will provide the SEC with a better understanding of potential trends or outliers in funds’ liquidity classifications reported on Form N-PORT.²³

The Final Amendments also change the definition of LEI in Form N-CEN, as described above with respect to Form N-PORT.²⁴

GUIDANCE ON OPEN-END FUND LIQUIDITY RISK MANAGEMENT PROGRAMS

The SEC stated that it was not adopting the proposed amendments to the Liquidity Rule and the mandatory swing pricing requirements, and instead it provided guidance on three questions that the SEC noted have been raised during outreach and monitoring relating to: (i) the frequency of classifying the liquidity of fund investments, (ii) the meaning of “cash” in the rule and (iii) determining and reviewing highly liquid investment minimums.²⁵

Frequency of Classification

The Liquidity Rule requires funds to 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.²⁶ According to the SEC, the staff has observed multiple instances where funds were not prepared to review classifications intra-month in response to changes in relevant market, trading and investment-specific considerations.²⁷ In response, the SEC noted that the Liquidity Rule requires funds to adopt and implement policies and procedures that are reasonably designed to enable funds to conduct intra-month review of liquidity classifications if there are changes in relevant market, trading and investment-specific conditions.²⁸ The Adopting Release states that those policies and procedures generally should identify, for example, (i) the type of information a fund will use to

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identify relevant intra-month changes and require funds to review liquidity classifications intra-month and (ii) the timeliness of that information.²⁹ According to the SEC, if a fund lacks information or uses stale information, it may not be able to identify when an intra-month review is required.³⁰

While the SEC has previously provided examples of changes in market, trading and investment-specific considerations that funds may wish to consider when reviewing liquidity classifications,³¹ the Adopting Release also states that funds generally should consider reviewing liquidity classifications if changes in portfolio composition are reasonably expected to materially affect one or more investment classifications.³² For example, when a fund substantially increases the size of its position in an investment, the fund should anticipate trading a larger size of that investment, which could materially and adversely affect the liquidity classification of that investment.³³ The SEC noted that a lack of market depth for a larger trade size is one example where it would be difficult to sell the investment within a particular time frame without the sale causing a significant change in market value.³⁴ The SEC also stated that funds generally should consider classifying newly acquired investments intra-month if acquiring a particular investment is reasonably expected to result in material changes to the liquidity profile of a fund.³⁵ Particularly, if the change to the fund's liquidity profile would result in the fund falling below its highly liquid investment minimum or exceeding the rule's limit on illiquid investments.³⁶

Meaning of Cash

In determining whether an investment can be classified as highly liquid or moderately liquid, the Liquidity Rule requires a fund to consider the time in which it reasonably expects an investment to be "convertible to cash" (i.e., sold and settled) without significantly changing the market value of the investment.³⁷ "Cash" under the Liquidity Rule means U.S. Dollars and does not include foreign currencies or cash equivalents.³⁸ The SEC noted the staff has observed that some funds: (i) classify any currency as highly liquid, regardless of the time it would take to convert that currency to U.S. dollars or (ii) consider only the time an investment would be convertible to a different currency rather than U.S. dollars despite the fact funds pay cash redemptions in U.S. dollars. In response, the SEC stated that when classifying investments, funds need to consider the time it takes to convert those investments, including non-U.S. dollar currencies, into U.S. dollars.³⁹ Thus, with respect to an international currency investment, a fund would need to consider the amount of time it would be reasonably expected to take to convert a reasonably anticipated trade size of that currency into U.S. dollars under the current market conditions without significantly changing the currency exchange rate.⁴⁰ Relevant factors generally include: (i) the presence of currency controls, (ii) the presence of an active market in forward or spot contracts exchanging the currency for U.S. dollars and (iii) any delays in currency conversions driven by market structure or operations.⁴¹

Further, the Adopting Release notes that funds should not base liquidity determinations in an international jurisdiction 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.⁴² Instead, funds generally should consider:

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- (i) the period of time in which an international non-currency investment can be sold and settled in the local market without significantly changing the market value of the investment; and
- (ii) the period of time in which any international currency received upon settlement can be converted to U.S. dollars without significantly changing the currency exchange rate.⁴³

The SEC noted that it would be reasonable for a fund to assume that it can initiate a hypothetical currency conversion at the same time as the hypothetical sale of the international investment.⁴⁴ In other words, a fund is not required to assume that it can initiate a currency conversion only after the sale and settlement of the international investment.⁴⁵ The SEC also recognized that when a fund converts an illiquid international investment into an illiquid local currency as a step toward reducing the fund's illiquid investments (i.e., upon the receipt of the illiquid currency, the fund takes reasonable steps to convert that currency to U.S. dollars or to purchase investments that will be convertible to U.S. dollars), the SEC would not consider a fund acquiring the illiquid currency to violate the Liquidity Rule's 15% illiquid investment limit.⁴⁶

Highly Liquid Investment Minimums

The Liquidity Rule requires a fund that does not primarily hold highly liquid investments to determine a highly liquid investment minimum and to consider specific factors, as applicable, in determining that minimum.⁴⁷ The SEC reiterated and highlighted prior guidance on how a fund should determine its highly liquid investment minimum with a focus on funds that invest significantly in less liquid or illiquid investments, such as bank loan funds, and on the importance of a highly liquid investment minimum considering a fund's particular risk factors.⁴⁸ Specifically, the Adopting Release states that a fund having a substantial amount of less liquid or illiquid investments should establish a highly liquid investment minimum that is higher than that of funds with more liquid assets.⁴⁹ Finally, the SEC noted that while a line of credit or similar arrangement can be used to meet unexpected redemptions and can be taken into consideration when determining its highly liquid investment minimum, this can be better addressed using the construction of the fund's portfolio.⁵⁰

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ENDNOTES

- 1 Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs, SEC Release No. IC-35308 (August 28, 2024) (“Adopting Release”), available at <https://www.sec.gov/files/rules/final/2024/ic-35308.pdf>.
- 2 The effective date for the Form N-PORT and Form N-CEN amendments is also November 17, 2025. The SEC adopted a tiered approach for the Form N-PORT amendment, giving smaller entities an additional six-month compliance period, which is May 18, 2026. See Adopting Release at 57-59. “[S]maller entities are funds that together with other investment companies in the same “group of related investment companies” have net assets of less than \$1 billion as of the end of the most recent fiscal year.” *Id.* n. 169.
- 3 The SEC also adopted technical and conforming amendments to the definition of ETF in Form N-CEN and Form N-PORT that would replace language in each definition that refers to “an exemptive rule adopted by the Commission” with a direct reference to rule 6c-11. Adopting Release at 57.
- 4 The aspects of the proposal that were not adopted by the SEC at this time included amendments to the Liquidity Rule that would: (1) eliminate the “less liquid” investment category from the existing liquidity classification framework under rule 22e-4 and treat all such investments as illiquid, subject to the 15% limit on illiquid investments; (2) require funds to classify all portfolio investments daily instead of monthly, and require that funds incorporate stress into their liquidity classifications by assuming the sale of a set stressed trade size equal to 10% of each portfolio investment (a so-called “vertical slice”); (3) require funds to determine and maintain a highly liquid investment minimum equal to at least 10% of net assets, eliminating the current exclusion for funds that primarily invest in highly liquid investments; (4) amend provisions governing the designation of investments as “illiquid” and the calculation of applicable liquidity minimums and illiquidity limits; (5) require a fund subject to mandatory swing pricing to implement swing pricing whenever it has net redemptions in any amount or net purchases in excess of 2% of the fund’s net assets; (6) specify when and how a fund subject to mandatory swing pricing would adjust its net asset value and impose a specific framework for calculating the swing factor price adjustment; and (7) for funds subject to mandatory swing pricing, require that purchase and redemption orders be received by a fund, its transfer agent or a registered clearing agency by an established cut-off time (i.e., the pricing time, which is typically 4 p.m. ET) to receive the applicable day’s price. Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting (November 2, 2022), available at <https://www.sec.gov/files/rules/proposed/2022/33-11130.pdf>.
- 5 Hester M. Peirce, Too Short to Report: Statement on Adoption of Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs (Aug. 28, 2024), available at <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-form-n-port-amendments-082824>.
- 6 Mark T. Uyeda, Statement on Adoption of Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs (Aug. 28, 2024), available at <https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-form-n-port-amendments-082824>.
- 7 Agency Rule List – Spring 2024, <https://www.reginfo.gov/public/do/eAgendaMain>.
- 8 Adopting Release at 64.
- 9 *Id.*
- 10 *Id.* n. 4.
- 11 *Id.* at 20. The SEC also noted that “as adopted in 2016, Form N-PORT would have required funds to file monthly reports within 30 days of month-end.” In 2018, the SEC adopted an interim final rule to require quarterly filing of monthly information within 60 days of quarter-end as a result of the SEC’s assessment of its internal cybersecurity risk profile. The SEC stated in the Adopting Release

ENDNOTES (CONTINUED)

- that it has taken steps to address the impetus of the interim final rule, including modernizing the EDGAR system and gaining additional experience with receiving, maintaining and protecting sensitive portfolio data on the EDGAR system. *Id.* at 7.
- 12 See Amendments to the Timing Requirements for Filing Reports on Form N-PORT, SEC Release No. IC-33384 (February 27, 2019), *available at* <https://www.sec.gov/files/rules/interim/2019/ic-33384.pdf>, at 4-12.
- 13 Adopting Release at 14.
- 14 See Investment Company Reporting Modernization, Investment Company Act SEC Release No. 33-10231 (Oct. 13, 2016) (“Reporting Modernization Adopting Release”), *available at* <https://www.sec.gov/files/rules/final/2016/33-10231.pdf>, at 17.
- 15 Adopting Release at 32.
- 16 *Id.* at 34.
- 17 *Id.* at 33.
- 18 *Id.* at 12.
- 19 *Id.* at 46.
- 20 *Id.*
- 21 *Id.* at 47.
- 22 *Id.*
- 23 *Id.* at 47-48.
- 24 *Id.* at 48.
- 25 “The [L]iquidity [R]ule requires: (1) assessment, management, and periodic review of a fund’s liquidity risk; (2) classification of the liquidity of each of a fund’s portfolio investments into one of four prescribed categories—ranging from highly liquid investments to illiquid investments—including at-least-monthly reviews of these classifications and reporting of monthly classifications on Form N-PORT; (3) determination and periodic review of a highly liquid investment minimum for certain funds; (4) limitation on illiquid investments; and (5) board oversight.” *Id.* at 48.
- 26 See 17 C.F.R. 270.22e-4(b)(1)(iii); Adopting Release at 49.
- 27 Adopting Release at 49.
- 28 *Id.*
- 29 *Id.*
- 30 *Id.* at 50.
- 31 *Id.*
- 32 *Id.*
- 33 *Id.*
- 34 *Id.*
- 35 *Id.*
- 36 *Id.*
- 37 *Id.* at 51.
- 38 *Id.*
- 39 *Id.* at 51.

ENDNOTES (CONTINUED)

40 *Id.* at 52.

41 *Id.*

42 *Id.*

43 *Id.*

44 *Id.* at 52-53.

45 *Id.* at 53.

46 *Id.* at 54.

47 *Id.* at 55; 17 C.F.R. 270.22e-4(b)(1)(iii).

48 *Id.* at 55-56.

49 *Id.* at 56. Additionally, according to the SEC, funds that have investment strategies that result in greater volatility of flows would be best served having a liquid investment minimum that is higher than those of funds that have investment strategies that result in lesser flow volatility.

50 *Id.* The SEC also noted that the goal of the highly liquid investment minimum is to have funds better prepared to meet redemptions without significant dilution, but that the SEC is not deciding how a portfolio manager meets redemptions.

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