

## SEC VOTES TO EXPAND FORM N-PORT AND FORM N-CEN REPORTING REQUIREMENTS

On August 28, 2024, in a 3-to-2 vote, the US Securities and Exchange Commission (the "**SEC**" or the "**Commission**") adopted amendments to Form N-PORT ("**Amended Form N-PORT**") and Form N-CEN ("**Amended Form N-CEN**" and, together with Amended Form N-PORT, the "**Amendments**") under the Investment Company Act of 1940 (the "**Investment Company Act**") and provided guidance related to open-end fund liquidity risk management program requirements (the "**Guidance**"). According to the SEC, the amendments are designed to provide the Commission and the public with timelier information about a large segment of registered investment companies' ("**funds**") portfolio investments and, in turn, improve transparency and facilitate better monitoring of these funds by, among other things, requiring funds to file Form N-PORT reports on a monthly basis, within 30 days after the end of each month. The Amendments are likely to result in increased compliance costs and oversight.<sup>1</sup> The Guidance issued in the adopting release relates to the frequency of classifying the liquidity of investments, the meaning of "cash" for purposes of Rule 22e-4 under the Investment Company Act ("**Rule 22e-4**"), and the designation of highly liquid investment minimums.

<sup>1</sup> On November 2, 2022, the Commission first proposed to amend various rules under the Investment Company Act concerning reporting requirements and liquidity and dilution management for registered open-end funds, such as mutual funds (the "**Proposed Rule**"). Among other things, the Proposed Rule would have amended Rule 22e-4 under the Investment Company Act to address ostensible weaknesses in open-end funds' liquidity risk management programs (the "**Liquidity Risk Management Proposal**"). The Proposed Rule also would have amended Rule 22c-1 to require open-end funds, other than money market funds and exchange-traded funds, to implement swing pricing, and would impose a "hard close" for purchases and redemptions of mutual fund shares (the "**Swing Pricing Proposal**"). We provided a client alert (the "**Client Alert**") on the [Proposed Rule](#) and note the SEC did not address the Liquidity Risk Management Proposal or Swing Pricing Proposal on August 28, 2024.

## AMENDED FORM N-PORT

The Amended Form N-PORT does not depart from the Proposed Rule. As discussed in our previous [Client Alert](#), the Amended Form N-PORT will require funds to file reports on a monthly basis, instead of on a quarterly basis. These monthly filings will be due within 30 days after the end of the month to which they relate, rather than the current requirement of 60 days after the end of a fund's fiscal quarter. The Amended Form N-PORT will also increase the publication frequency of funds' monthly reports. Currently, funds are required to file reports on a quarterly basis and only the data for the third month of the period is made public, while the data for the first two months of such period remains confidential with the SEC. Under the Amendments, funds will be required to file monthly reports and each such report will become public 60 days after the end of each month.

While voting against the Amendments, Commissioner Peirce stated that the changes to the Form N-PORT in the Proposed Rule were "[l]argely lost amidst the vigorous debate about swing pricing and hard close requirements," noting that the Commission's decision not to re-propose the Amended Form N-PORT deprived commenters of the opportunity to focus exclusively on the costs and benefits of these changes. Commissioner Peirce also voiced concerns that the public monthly disclosure of portfolio holdings could result in information leakage harmful to funds and their shareholders, citing threats of frontrunning and other predatory practices as a result of the Amended Form N-PORT.<sup>2</sup> Similarly dissenting, Commissioner Uyeda expressed his misgivings that more frequent public disclosures of portfolio holdings can put affected funds at a relative disadvantage to "other investment pools that compete in the same markets, such as hedge funds, family offices, and collective investment trusts, that are not subject to these requirements."<sup>3</sup>

## AMENDED FORM N-CEN

The Amended Form N-CEN was largely adopted as proposed, except for the proposed amendment to remove swing pricing disclosure from Form N-CEN. The Amended Form N-CEN will, however, require open-end funds that are subject to liquidity risk management program requirements under Rule 22e-4 to report certain information about service providers used to fulfill those requirements. Specifically, the Amended Form N-CEN will require funds to: (1) name each liquidity service provider; (2) provide identifying information, including the legal entity identifier, 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. The SEC noted that the information required pursuant to the Amended Form N-CEN will help the Commission better "understand potential trends or outliers in funds' liquidity classifications reported on Form N-PORT; for example, by analyzing classification trends of specific

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<sup>2</sup> See Hester M. Peirce, Commissioner, U.S. Sec. & Exch. Comm'n, Statement on Adoption of Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs (August 28, 2024).

<https://www.sec.gov/newsroom/speeches-statements/peirce-statement-form-n-port-amendments-082824>

<sup>3</sup> See Mark T. Uyeda, Commissioner, U.S. Sec. & Exch. Comm'n, Statement on Adoption of Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs (August 28, 2024).

<https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-form-n-port-amendments-082824>

vendors, [SEC] may distinguish patterns in how classifications might differ due to vendor models or data." Fund companies and their boards will need to assess operational and administrative hurdles that this new disclosure requirement will have on fund operations.

## **COMPLIANCE DATE**

The Amendments will become effective as of November 17, 2025. Funds generally will be required to comply with the Amendments for reports filed on or after that date, except fund groups with net assets of less than \$1 billion will have until May 18, 2026, to comply with the Amended Form N-PORT.

## **GUIDANCE ON LIQUIDITY RISK MANAGEMENT**

In 2016, the Commission adopted Rule 22e-4, which requires open-end funds to adopt and implement liquidity risk management programs. The rule was designed to promote effective liquidity risk management, with the intention of reducing the risk that open-end funds will be unable to meet their redemption obligations and mitigating dilution of the interests of fund shareholders. The liquidity rule 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.

While the Commission decided not to adopt swing pricing or hard close amendments,<sup>4</sup> the SEC included the Guidance which it noted addresses certain questions raised to the SEC related to Rule 22e-4. The Guidance states that the SEC has observed that funds were underprepared for the required frequency of classification of the liquidity of their investments and reinforces the fact that Rule 22e-4 requires open-end funds to adopt policies and procedures reasonably designed so that those funds can conduct the required intra-month review of liquidity classifications. The Guidance also confirms that the meaning of "cash" in Rule 22e-4 is a reference to U.S. dollars and does not include foreign currencies or cash equivalents. The SEC further notes that funds need to consider the time it would take to convert other currencies to U.S. dollars when classifying their investments. Additionally, funds subject to Rule 22e-4 need to consider the time it would take for an international non-currency investment to be sold and settled in the local market without significantly impacting its market value, as well as the expected time it would take to convert the proceeds to U.S. dollars. If a fund does not reasonably expect to be able to convert such a currency to U.S. dollars within seven calendar days, that currency should be classified as an illiquid investment under Rule 22e-4. The SEC, however, did note that when "... a fund converts an illiquid international investment into an illiquid local currency as a step toward reducing the fund's illiquid investments, [SEC] would not consider the fund as acquiring the illiquid currency in violation of the rule's prohibition on acquiring illiquid investments in excess of the rule's 15% limit."

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<sup>4</sup> The swing pricing and hard close amendments are absent from the [Spring 2024 Regulatory Agenda](#), though the Commission may re-propose these amendments in 2025.

In addition, the SEC reiterated previous guidance related to the highly liquid investment minimums applicable to funds that do not primarily hold assets that are highly liquid investments by highlighting the fact that these minimums are of particular importance with respect to funds with certain risk factors. For example, the Guidance flags funds with investment strategies that lead to greater volatility, or that are reasonably expected to have greater volatility in reasonably foreseeable circumstances, will generally need higher minimums of highly liquid investments than other funds. The SEC further noted that "...while a line of credit or similar arrangement can facilitate a fund's ability to meet unexpected redemptions and can be taken into consideration when determining its highly liquid investment minimum, [SEC] continues to believe that liquidity risk management is better conducted primarily through construction of a fund's portfolio."

### **KEY TAKEAWAYS**

While the Amendments do not include the controversial Swing Pricing Proposal, the adopted changes will impact reporting requirements and, ultimately, add additional expenditures on funds in order to comply with more frequent filing requirements. Ultimately, it will take time to see the true impacts of the adopted changes, in particular whether the potential benefit to shareholders of increased public disclosure of portfolio holdings outweighs the possible negative impacts associated with frontrunning, and public disclosure of confidential information.

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