

# SEC Enhances Reporting on Forms N-PORT & N-CEN; Issues Liquidity Guidance

AUGUST 29, 2024

## Key Takeaways

- The Securities and Exchange Commission adopted amendments to the reporting requirements on Form N-PORT and Form N-CEN, increasing the frequency and scope of information required to be reported to the SEC.
- The SEC adopted targeted guidance on certain aspects of open-end registered fund liquidity risk management programs.
- The SEC did not adopt the more significant and controversial components of the 2022 proposed rulemaking. However, the SEC could seek to re-propose these other components of the 2022 proposed rulemaking in 2025.

On August 28, 2024, the SEC, by a vote of three to two, adopted amendments (Amendments) to the current reporting requirements on Form N-PORT and Form N-CEN and provided guidance (Liquidity Rule Guidance) related to liquidity risk management programs adopted pursuant to Rule 22e-4 (Liquidity Rule) under the Investment Company Act of 1940.<sup>1</sup>

The SEC originally proposed the Amendments, together with other significant – and controversial – reforms, on November 2, 2022.<sup>2</sup> The Amendments, among other things:

- Require funds<sup>3</sup> to file Form N-PORT reports on a monthly basis and within 30 days of month end. In addition, each report will be made public 60 days after month end.
- Require funds<sup>4</sup> to identify and provide certain information about liquidity service providers on Form N-CEN, including the asset classes for which the liquidity service provider provided liquidity classifications and whether the provider was hired or terminated during the period.

Notably, the SEC did not adopt the more controversial components of the 2022 proposed rulemaking, which would have, among other things: (i) mandated swing pricing for all registered open-end funds other than MMFs and ETFs; (ii) imposed a “hard close” for funds required to implement swing pricing; and (iii) made significant changes to the Liquidity Rule’s liquidity classification framework and other elements, which could have had a substantial impact on fund management and certain investment strategies. Importantly, while the more controversial components of the 2022 proposed rulemaking were not adopted at the open meeting held on August 28, 2024, the SEC’s current regulatory agenda suggests that those components could be re-proposed in 2025.<sup>5</sup> However, the SEC did provide the Liquidity Rule Guidance related to (i) the frequency of classifying the liquidity of fund<sup>6</sup> investments; (ii) the meaning of “cash” in the Liquidity Rule and related considerations regarding the liquidity of certain non-U.S. investments; and (iii) determining and reviewing highly liquid investment minimums.

## Amendments

The core aspects of the Amendments are briefly summarized below:

- **Form N-PORT**

- **Filing and Publication Frequency.** Reports on Form N-PORT will be required to be filed on a monthly basis with the SEC within 30 days of month end, with public availability of most data 60 days after each month end. In addition, the Amendments will require that a fund report certain return and flow information only for the preceding month that the Form N-PORT covers rather for the preceding three months. Current items that are non-public, including individual portfolio investment liquidity classifications, will remain non-public in individual reports under the Amendments. Currently, funds are required to file Form N-PORT reports on a quarterly basis, with public availability of most data 60 days after each fiscal quarter.
- **Entity Identifiers.** The Amendments will also amend, as proposed, certain items and definitions related to entity identifiers in Form N-PORT.
- **Public Reporting of Aggregate Liquidity Classifications NOT Required.** In a departure from the proposal, the Amendments will not require open-end funds to report aggregate liquidity classification information.
- **Portfolio Holdings and Regulation S-X NOT Required.** In another departure from the proposal, the Amendments will not require funds to present portfolio holdings on Form N-PORT in accordance with Regulation S-X more frequently than currently required.

- **Form N-CEN**

- **Liquidity Service Providers.** Reports on Form N-CEN will require the following disclosure concerning liquidity service providers for funds subject to the Liquidity Rule: (i) name; (ii) identifying information; (iii) affiliation information; (iv) the asset classes for which the liquidity service provider provided liquidity classifications; and (v) whether the provider was hired or terminated during the period.
- **Entity Identifiers.** The Amendments will also amend, as proposed, certain items and definitions related to entity identifiers in Form N-CEN.

## Liquidity Rule Guidance

The core aspects of the Liquidity Rule Guidance are briefly summarized below. According to the SEC, the Liquidity Rule Guidance is intended to “address questions raised through outreach and monitoring.”

- **The Frequency of Classifying the Liquidity of Fund Investments.** The Liquidity Rule currently 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.” The Liquidity Rule provides generally that liquidity risk management programs must include policies and procedures reasonably designed to incorporate the rule’s elements, including this classification provision. The SEC provided guidance on both the scope of such policies and procedures as well as considerations with respect to the required intra-month reviews of liquidity classifications.
- **Policies and procedures.** The SEC states in the Adopting Release that these policies and procedures generally should “identify, for example, the type of information a fund will use to identify relevant intra-month changes and to review liquidity classifications intra-month, as well as the timeliness of that information.” It further states that without information, or with stale information, a fund might not be able to identify when intra-month reviews of liquidity classifications are required.

- **Changes in investment-specific conditions.** The SEC also states in the Adopting Release that, in addition to its prior guidance on the “examples of changes in market, trading, and investment-specific considerations that funds may wish to consider” when determining whether to review liquidity classifications more frequently than monthly, “funds generally should consider reviewing liquidity classifications if changes in portfolio composition are reasonably expected to materially affect one or more investment classifications.” The SEC provides specific examples of relevant considerations, including that (i) a fund that substantially increases the sizes of its position in an investment may reasonably anticipate trading a larger size of that investment, which could impact liquidity classifications in some circumstances, and (ii) a fund “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.”
- **The Meaning of “Cash” in the Liquidity Rule; Related Considerations Regarding the Liquidity of Certain Non-U.S. Investments.** The SEC reiterates that, in the context of the Liquidity Rule, the term “cash” means U.S. dollars and does not include foreign currencies or cash equivalents,<sup>7</sup> and further states that funds need to consider conversion to U.S. dollars when classifying an investment.
  - For non-currency international investments, the SEC gives guidance on certain classification considerations and notes that “[f]or purposes of assessing the period of time for a currency conversion . . . it would be reasonable for a fund to assume that it initiates a hypothetical currency conversion at the same time as the hypothetical sale of the international investment . . . . That is, a fund is not required under the [L]iquidity [R]ule to assume that it can initiate a currency conversion only after the sale and settlement of the international investment.”
  - The SEC further provides that non-U.S. dollar currencies are investments that need to be separately classified considering the time in which a non-U.S. currency investment would be convertible to U.S. dollars without significantly changing the currency exchange rate. According to the SEC, relevant factors generally include currency controls, the presence of an active market in forward or spot contracts exchanging the currency for U.S. dollars and any market-driven or operational delays in currency conversion.
  - The SEC states that, if a fund does not reasonably expect that a non-U.S. currency can be converted into U.S. dollars within seven calendar days, that currency “should be classified as an illiquid investment . . . [and] other investments in that jurisdiction that would be sold or disposed of in exchange for the illiquid local currency also should be classified as illiquid investments.” However, the SEC also recognizes that a fund with investments in a jurisdiction with currency controls or similar restrictions may exceed the Liquidity Rule’s 15% limit on illiquid investments and provides that when such a fund “converts an illiquid international investment into an illiquid local currency as a step toward reducing the fund’s illiquid investments, [the 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.”<sup>8</sup> Such a fund receiving an illiquid currency from the sale of an illiquid international investment “generally should consider taking reasonable steps such that [the] illiquid currency received . . . will not be used for purposes of [the] fund’s investment strategy or to acquire illiquid investments.”
- **Determining and Reviewing Highly Liquid Investment Minimums.** The SEC reiterates and highlights its previous guidance on how a fund should determine its highly liquid investment minimum, particularly with respect to funds “that are on the lower end of the liquidity spectrum.” The SEC emphasizes the importance of a highly liquid investment minimum that considers a fund’s particular risk factors, including whether a fund invests significantly in less liquid or illiquid investments, and whether a fund’s investment strategies have had greater volatility of flows than other investment strategies, or that are reasonably expected to have greater volatility in reasonably foreseeable circumstances.

## Key Dates and Timing

The Amendments will become effective November 17, 2025, and funds that fall within the scope of the Amendments will generally be required to comply with the Amendments for reports filed on or after that

date. However, funds with net assets less than \$1 billion will have until May 18, 2026 to comply with the Amendments with respect to Form N-PORT reports.

An upcoming *Dechert OnPoint* will provide further analysis of the Amendments and Liquidity Rule Guidance and their potential impact.

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## Footnotes

1. Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs, Release No. IC-35308 (August 28, 2024) (Adopting Release). At times, this *Dechert NewsFlash* tracks the Adopting Release without the use of quotation marks. Terms not defined in this *Dechert NewsFlash* have the meaning assigned to them in the Adopting Release.
2. Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting, Release No. IC-34746 (November 2, 2022) (Proposing Release).
3. With respect to Form N-PORT, the term “fund” refers to open-end funds (including exchange-traded funds (ETFs) but excluding money market funds (MMFs)), registered closed-end funds and ETFs organized as unit investment trusts.
4. With respect to Form N-CEN, the term “fund” refers to open-end funds (including ETFs and MMFs), registered closed-end funds, ETFs organized as unit investment trusts, small business investment companies and registered unit investment trusts.
5. See Spring 2024 Unified Agenda of Regulatory and Deregulatory Actions, Regulation Identification No. (RIN) 3235-AM98 (July 8, 2024).
6. With respect to the Liquidity Rule, the term “fund” refers to open-end funds (other than MMFs).
7. See Investment Company Liquidity Risk Management Programs, Release No. IC-32315 (October 13, 2016) at n.848.
8. The Liquidity Rule expressly prohibits a fund from acquiring any illiquid investment if, immediately after the acquisition, the fund would have invested more than 15% of its net assets in illiquid investments that are assets. Certain reporting and other requirements are triggered whenever a fund holds more than 15% of its net assets in illiquid investments that are assets (*i.e.*, whether due to an “active” or “passive” exceedance of the 15% limit). See Rule 22e-4(b)(1)(iv).

## Key Contacts



**Aaron D. Withrow**

PARTNER

Washington, D.C.

+1 202 261 3442 aaron.withrow@dechert.com



**Brenden P. Carroll**

PARTNER

Washington, D.C.

+1 202 261 3458 brenden.carroll@dechert.com



**Puyin Bai**

ASSOCIATE

Washington, D.C.

+1 202 261 3377 puyin.bai@dechert.com



**Monica R. Patel**

ASSOCIATE

San Francisco

+1 415 262 4552 monica.patel@dechert.com



**Morgan Willard**

ASSOCIATE

Washington, D.C.

+1 202 261 3487 morgan.willard@dechert.com



**Sarah Yan**

ASSOCIATE

New York

+1 212 649 8721 sarah.yan@dechert.com

## Related Professionals



PARTNER

**Aaron D. Withrow**

Washington, D.C.  
+1 202 261 3442



PARTNER

**Brenden P. Carroll**

Washington, D.C.  
+1 202 261 3458



ASSOCIATE

**Puyin Bai**

Washington, D.C.  
+1 202 261 3377



ASSOCIATE

**Monica R. Patel**

San Francisco  
+1 415 262 4552



ASSOCIATE

**Morgan Willard**

Washington, D.C.  
+1 202 261 3487



ASSOCIATE

**Sarah Yan**

New York  
+1 212 649 8721

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