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## Investment Company Reporting Modernization Amendments – A Summary of an Extensive Overhaul

On October 13, 2016, the U.S. Securities and Exchange Commission (SEC) adopted new rules and forms, as well as amendments to existing rules and forms, under the Investment Company Act of 1940 (1940 Act) that are designed to modernize and enhance the reporting and disclosure of information by investment companies (Amendments).<sup>1</sup> The Amendments significantly overhaul the current reporting requirements for investment companies and will require them to disclose an array of new information to the SEC and investors. The SEC expects that the Amendments will improve the information that it receives from funds<sup>2</sup> so that it can better fulfill its mission of protecting investors; maintaining fair, orderly and efficient markets; and facilitating capital formation. The SEC also anticipates that investors or their financial advisers will be able to use the information collected to help them make more informed investment decisions.

The Amendments are one of a number of new rules and amendments either proposed or adopted by the SEC to understand and address the impact of investment advisers and investment companies on financial markets.<sup>3</sup> These new rules and amendments will allow the SEC to obtain data to better analyze information and improve its ability to carry out its regulatory mission. The SEC believes the Amendments will give it, as the regulatory body of the mutual fund industry, the tools it needs to be able to draw conclusions about any risks in the asset management industry.

The Amendments establish four new or revised sets of requirements:

- (1) New Form N-PORT, which will require funds to report monthly portfolio holdings information, along with other portfolio information, in a structured data (XML) format.<sup>4</sup>
- (2) Amendments to Regulation S-X, which will standardize and require new and enhanced disclosure about derivatives and other information in shareholder reports.
- (3) New Form N-CEN, which will replace Form N-SAR and require funds to report certain new census-type information to the SEC in XML format.<sup>5</sup>
- (4) Amendments to Forms N-1A, N-3 and N-CSR, which will require specific disclosure about securities lending activities of investment companies.

The SEC had also proposed new rule 30e-3, which would have given funds the ability to satisfy their delivery requirements for shareholder reports by posting the shareholder reports on their websites, as long as shareholders were given the opportunity to opt out of electronic delivery. The SEC ultimately determined it would not pursue the adoption of proposed rule 30e-3 at this time.

The effective date for the Amendments generally will be 60 days after publication in the Federal Register, and the compliance dates will vary between August 1, 2017 for the Amendments to Regulation S-X and June 1, 2018 to June 1, 2019 for the remaining Amendments.

The summary below identifies some of the most significant, and potentially the most burdensome, changes established by the Amendments.

## **I. New Form N-PORT (and Rescission of Form N-Q)**

Form N-PORT incorporates the information currently required by Form N-Q and requires new information, including extensive information on funds' derivative investments, securities lending practices and certain risk metrics. Unlike Form N-Q, Form N-PORT will be required to be filed monthly.

### **A. Filing Requirements – Who, When and How**

All registered management investment companies and exchange-traded funds (ETFs) organized as unit investment trusts (UITs), with the exception of money market funds and small business investment companies (SBICs), will be required to file Form N-PORT. Registrants offering multiple series will be required to file Form N-PORT for each series separately, even if information is the same for multiple series.

Form N-PORT must be filed monthly with the SEC no later than 30 days after the close of the month. The filing must be in XML, a structured data format, which will enhance the ability of the SEC, as well as investors and other potential users, to analyze the data reported both on a fund-by-fund basis and across funds.<sup>6</sup>

While Form N-PORT will be required to be filed monthly, only information with respect to the last month of a fund's fiscal quarter will be made public. This information will be released to the public on a 60-day delayed basis. In addition, the following information reported on Form N-PORT, discussed in more detail below, will not be made public with respect to any Form N-PORT filed:

- information regarding “miscellaneous securities” (generally securities representing in the aggregate five percent or less of a fund's investments);
- certain position-level risk metrics;
- information reported for country of risk and economic exposure;
- any explanatory notes related to such non-public information.

### **B. Information Required to Be Reported on Form N-PORT**

Form N-PORT will require each fund to report information about the fund and its portfolio of investments as of the close of the preceding month.<sup>7</sup> The reporting requirements include, among other items:

- General fund information.
- Assets and liabilities of the fund.
- Portfolio-level risk metrics for funds that have at least 25% of their net asset value (NAV) exposed to debt securities.
- Securities lending information.
- Performance return information.
- Fund flow information.
- Schedule of portfolio investments.
- Explanatory notes, if any, and exhibits.

## 1. General Fund Information

In addition to basic identifying information, Form N-PORT will require each fund to obtain a Legal Entity Identifier (LEI), if the fund does not already have one. An LEI is a unique identifier associated with a single entity and is intended to provide a uniform international standard for identifying counterparties to a transaction. The cost to obtain and maintain an LEI is currently minimal.<sup>8</sup>

## 2. Assets and Liabilities

Each fund, including any consolidated subsidiaries of the fund, will be required to report its total assets, total liabilities and net assets on Form N-PORT. Form N-PORT also will require the separate reporting of specific types of assets and liabilities, including:

- The aggregate value of “miscellaneous securities” held in the fund.
- Assets invested in a controlled foreign corporation (CFC) for the purpose of gaining exposure to certain types of instruments, such as commodity interests.
- The amounts of certain liabilities, including:
  - borrowings attributable to amounts payable for notes payable, bonds and similar debt;
  - payables for investments purchased either (i) on a delayed-delivery, when-issued or other firm commitment basis; or (ii) on a standby basis; and
  - the liquidation preference of outstanding preferred stock issued by the fund.

## 3. Portfolio-Level Risk Metrics

In order to provide more transparency and information regarding a fund’s investments in debt securities, Form N-PORT will require a fund that has significant exposure to debt or debt instruments to provide a portfolio-level calculation of duration and spread duration across the fund’s applicable maturities. A fund will be required to provide such calculations if the average value of a fund’s debt securities positions (including derivatives providing exposure to debt instruments or interest rates) for the previous three months is, in the aggregate, 25 percent or more of the fund’s NAV. Acknowledging that many fund groups already calculate such measures, the SEC determined that Form N-PORT specifically will permit a fund to report such measures using its own methodology and/or the conventions of service providers, provided that (i) such methodologies and conventions are consistent with the manner in which the fund reports internally and to investors; and (ii) the methodologies are employed consistently throughout Form N-PORT (Methodology Requirements). The following duration and spread duration calculations will be required by Form N-PORT for funds that have significant exposure to debt securities, as described above:

- ***Duration.*** A fund will be required to calculate and provide the change in value in its portfolio from a one basis point change (DV01) and a 100 basis point change (DV100) in interest rates for the following maturities, if applicable: 3 months, 1 year, 5 years, 10 years and 30 years.<sup>9</sup> This duration measure must be reported for each applicable currency to which the fund has at least one percent exposure, calculated as the notional value of relevant investments in each currency relative to the fund’s NAV.
- ***Spread Duration.*** A fund also will be required to calculate and provide the change in value in the fund’s portfolio from a one basis point change in credit spreads where the shift is applied to the option adjusted spread, aggregated by non-investment grade and investment grade exposures, for the following maturities: 3 months, 1 year, 5 years, 10 years and 30 years.<sup>10</sup>

## 4. Securities Lending Information

Form N-PORT will require funds to report on certain borrower and position-level information from its securities lending activities. Specifically, a fund must report the full name and LEI (if any) of each borrower and the aggregate value of all securities on loan to the particular borrower. In addition, for each investment held by a fund, the fund must report whether any portion was on loan, represented the reinvestment of cash collateral or represented non-cash collateral being

treated as part of the fund's assets. If a fund receives non-cash collateral from any counterparty that is not otherwise treated as a fund asset, the fund must report the aggregate principal amount and aggregate value of each category (*i.e.*, the category of investments that most closely represents the collateral) of non-cash collateral received for loaned securities.

## **5. Performance Return Information**

Form N-PORT also will require the reporting of monthly total returns for each of the three preceding months, reported on a class-level basis (for multiple class funds). Returns must be calculated using the same standardized formulas required for the calculation of returns as reported in the fund's prospectus. Return information reported on Form N-PORT will reflect swing pricing for funds that implement the use of swing prices.<sup>11</sup>

Funds must also report, for each of the three preceding months, monthly net realized gain (or loss) and the net change in unrealized appreciation (or depreciation) attributable to derivative investments. With respect to this disclosure on derivative investments, Form N-PORT will require the reporting of such information by both asset category and by type of derivative instrument within each asset category. In addition, a fund must report, for each of the three preceding months, monthly net realized gain (or loss) and the net change in unrealized appreciation (or depreciation) attributable to all non-derivative investments.

## **6. Fund Flow Information**

With respect to fund flow information, Form N-PORT will require funds to separately report, for each of the three preceding months, the total net asset value of:

- shares sold (including exchanges but excluding reinvestment of dividends and distributions);
- shares sold in connection with reinvestments of dividends and distributions; and
- shares redeemed or repurchased (including exchanges).

Flow information may be reported on a net basis for shares of a fund held in an omnibus account.

## **7. Schedule of Portfolio Investments**

Under Form N-PORT, funds will be required to report certain information on an investment-by-investment basis about each investment held by the fund and its consolidated subsidiaries (if any) as of the close of the preceding month. Form N-PORT will require reporting of certain items applicable to all investments and additional information related to specific types of investments including debt securities, convertible securities, repurchase and reverse repurchase agreements and derivatives.

### *(i) Basic Information Required for All Investments*

Certain basic information that will be required to be reported for each investment held by a fund includes (among other things):

- Identification of the investment, including the name of the issuer, the title or description of the investment, the LEI of the issuer and certain other securities identifiers, as applicable.
- The amount of each investment and currency denomination (including the exchange rate used, if applicable).
- The payoff profile of the investment, indicating whether the investment is held long or short (or not applicable).
- The asset type and issuer type of each investment based on a list of categories provided in Form N-PORT.
- The investment's categorization as a Level 1, Level 2 or Level 3 fair value measurement in the fair value hierarchy by generally accepted accounting principles.
- The country in which the issuer is organized and, if different, the country that corresponds to the country of investment or issuer based on the concentrations of the investment's risk and economic exposure (the country of investment or economic exposure will not be made public).<sup>12</sup>
- Whether the investment is a restricted security or an illiquid security.<sup>13</sup>

*(ii) Information Required for Debt Securities, Convertible Securities and Repurchase and Reverse Repurchase Agreements*

Under Form N-PORT, additional information about individual debt securities, convertible securities and repurchase and reverse repurchase agreements also must be provided. For debt securities, information about the maturity date and coupon type and rate will be required, as well as identification of whether: (i) the security is in default; (ii) payments are in arrears or deferred; or (iii) interest is required to be paid in-kind. With respect to convertible securities, Form N-PORT will require identification of the type of conversion feature, details about the reference instrument and the conversion ratio. For repurchase and reverse repurchase agreements, Form N-PORT requires information about the underlying securities, counterparty information and specific information about the terms of the agreement.

*(iii) Information Required for Derivative Investments*

One of the most significant requirements of Form N-PORT is the level of disclosure that will be required with respect to each derivative contract in a fund's portfolio. In addition to identifying the category of the contract (*e.g.*, forward, future, option, swaption, swap, warrant or other) and the counterparty, the fund must include key terms, dates and conditions with respect to the derivative contract including a description of the reference instrument underlying the contract.

With respect to describing the reference instrument underlying a derivative contract, the SEC provided very specific requirements for a reference instrument that is an index or custom basket. If the index's or custom basket's components are not publicly available, and the notional amount of the derivative contract is greater than one percent of the fund's NAV, specific information about the components of the index or custom basket will be required. For a derivative instrument on a non-public index or basket that has a notional value that represents five percent or more of the fund's NAV, the fund must provide the name, identifier, number of shares or notional amount or contract value as of the trade date, and the value for all of the index's or custom basket's components. For derivatives on a non-public index or basket that has a notional value that represents less than five percent but more than one percent of the fund's NAV, the fund must provide component information for the 50 largest components and any other components where the notional value for that component is over one percent of the notional value of the index or custom basket.

*(iv) Delta Requirements for Options and Convertible Securities*

The SEC also is requiring a position-level risk metric in the form of delta for each option and convertible security held by a fund. "Delta" is a calculation of a ratio that is used to compare the change in the price of the underlying asset to the corresponding change in the price of a derivative. As with the calculations of duration and spread duration discussed above for debt securities, a fund will be permitted to calculate delta using its own methodology and/or the conventions of service providers, provided that the fund complies with the Methodology Requirements described above. Unlike the calculations of duration and spread duration for debt securities, the calculations with respect to delta are not subject to public disclosure.

*(v) Information Required for Miscellaneous Securities*

Funds may also elect to report an aggregate amount not exceeding five percent of the total value of the fund's portfolio investments in one amount as "miscellaneous securities," provided such securities:

- are not listed as restricted;
- have been held for not more than one year prior to the date of the related balance sheet; and
- have not previously been reported by name to the shareholders, or set forth in any registration statement, application or report to shareholders or otherwise made available to the public.

## **8. Explanatory Notes and Exhibits**

Form N-PORT will permit funds to provide explanatory notes that the fund believes would be helpful in understanding the information reported. This could include, for example, assumptions made when responding to items in the filing, methodologies used in responding to certain items, or explanations for seemingly anomalous responses. Explanatory

notes related to any non-public information provided on Form N-PORT will also not be made public. In addition to the information above, Form N-PORT also will require funds to attach their complete portfolio holdings as of the close of the period covered by the report for reports filed for the end of the first and third quarters of the fund's fiscal year. Such holdings must be presented in accordance with Regulation S-X and not in XML format.

## II. Amendments to Regulation S-X

The Amendments to Regulation S-X will require funds to disclose new information in their financial statements. The SEC believes the Amendments will serve to highlight a fund's use of leverage and potential risk of loss posed by changes in market conditions by eliciting detailed information about a fund's exposure to liquidity, leverage and counterparty risks through the use of derivatives. The Amendments are intended to require funds to provide similar disclosure about their investments in derivatives in their financial statements so that investors, particularly individual investors, receive clear and consistently presented information across funds.

The Amendments revise Articles 6 and 12 of Regulation S-X and specifically provide for: (i) new standardized disclosure regarding fund holdings in open futures contracts, open forward foreign currency contracts and open swap contracts, as well as additional disclosure regarding fund holdings of written and purchased option contracts; (ii) updated disclosure for other investments; and (iii) other Amendments, including changes to the general form and content of fund financial statements.

### A. New Standardized Disclosure Regarding Fund Holdings in Derivative Investments

The Amendments to Regulation S-X with respect to derivatives are similar to the requirements of Form N-PORT, as discussed above. Under the current rules, derivatives are included in the broad category of "investments other than securities" without specific instructions or requirements for standardized information relating to derivatives other than options. Funds now will have to report specific information about open futures contracts, open forward foreign currency contracts, open swap contracts and written and purchased option contracts in separate schedules under Schedule 12-13, among other derivatives-related information. The Amendments also require derivatives-related disclosure to be displayed prominently in the schedule of investments in a fund's financial statements, rather than in the notes to the financial statements as is the current practice. Schedules 12-13 through 12-13C prescribe the specific information required for each contract, which is reflected in the chart below:

	<b>Open Options Contracts Written<sup>14</sup></b>	<b>Open Futures Contracts</b>	<b>Open Forward Foreign Currency Contracts</b>	<b>Open Swap Contracts</b>
<b>Description<sup>15</sup></b>	✓	✓	✓ <i>(amount and description of currency to be purchased and sold)</i>	✓ <i>(description and terms of payments to be paid and received to another party)</i>
<b>Counterparty<sup>16</sup></b>	✓		✓	✓
<b>Number of Contracts</b>	✓	✓		
<b>Notional Amount</b>	✓	✓		✓
<b>Exercise Price</b>	✓			
<b>Date</b>	✓ <i>(expiration)</i>	✓ <i>(expiration)</i>	✓ <i>(settlement)</i>	✓ <i>(maturity)</i>
<b>Value</b>	✓	✓		✓
<b>Unrealized Appreciation/ Depreciation</b>		✓ <sup>17</sup>	✓	✓
<b>Upfront Payments/ Receipts Under the Contract</b>				✓

As discussed above with respect to Form N-PORT and as illustrated in the chart above, the SEC is requiring much more detailed information about each derivative contract to be both transmitted to the SEC on Form N-PORT and disclosed to investors in shareholder reports. However, there are some differences in the reporting requirements for derivatives in Form N-PORT and the disclosure required by Regulation S-X. For example, with respect to derivatives where the underlying reference instrument is a non-public index or custom basket, Regulation S-X will not require the extensive component disclosure required by Form N-PORT for derivative contracts in which the notional value of the contract is five percent or more of the fund's NAV.

## B. Updated Disclosure for Other Investments

Similar to the additional information required for derivative contracts described above, the Amendments also will require additional information for "other investments," which are investments not otherwise required to be reported pursuant to Article 12 (e.g., investments in real estate and commodities). This information includes (1) a description of the investment; (2) the balance held at the close of the period (quantity); and (3) the value of each item at the close of the period. In addition, the Amendments revise rule 12-12 under Regulation S-X to require funds to indicate the interest rate or preferential dividend and maturity rate for certain debt securities. With respect to disclosing the interest rates of variable rate securities, the Amendments will require that funds disclose the referenced rate and spread, along with the end-of-period interest rate for each investment. In addition, for securities with payments in-kind, the Amendments require the funds to provide the rate paid in-kind in order to provide more transparency as to when the fund is generating income that is not paid in cash.

## C. Other Amendments

Other revisions and conforming changes to Articles 6 and 12 of Regulation S-X are included in the Amendments.<sup>18</sup> Some of the more significant new requirements are:

- Funds must identify each issue of securities held by the fund in connection with open put or call options contract and loans for short sales or where any portion of the issue is on loan.
- With respect to "each investment not readily marketable" as described in rules 12-12, 12-12A, 12-12B and 12-13, funds must disclose whether an investment was valued by using significant unobservable inputs and whether an investment cannot be sold because of restrictions or conditions applicable to the investment.
- Funds must report tax basis disclosure for the portfolio as a whole, specifically: (i) the aggregate gross unrealized appreciation for all investments in which there is an excess of value over tax cost; (ii) the aggregate gross unrealized depreciation for all investments in which there is an excess of tax cost over value; (iii) the net unrealized appreciation or depreciation; and (iv) the aggregate cost of investments for Federal income tax purposes.

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- Funds must disclose additional information regarding their investments in and advances to affiliates, including (i) net realized gain or loss for the period for each affiliated investment and the net increase or decrease in unrealized appreciation or depreciation for the period for each affiliated investment; and (ii) total realized gain or loss and total net increase or decrease in unrealized appreciation or depreciation for all affiliated investments.
- A fund must provide separate disclosure for income from non-cash dividends and payment of in-kind interest on its statement of operations if all income of this type exceeds five percent of the fund's investment.

### III. New Form N-CEN (and Rescission of Form N-SAR)

The SEC also adopted Form N-CEN, which will require most registered investment companies to report certain census-type information necessary for the SEC's data collection purposes. Form N-CEN is very similar to the current Form N-SAR in that it will be used primarily for SEC purposes and the questions are primarily in a "yes" or "no" or short answer format. In determining the information to be reported on Form N-CEN, the SEC focused on information that (i) would not be reported elsewhere, or (2) if reported in another filing, would be helpful for the SEC to receive in a format that can be easily aggregated and analyzed across the industry. The SEC intends to use the information collected from Form N-CEN for a variety of purposes, including understanding industry trends, informing policy and assisting with the SEC's examination and inspection programs. Below are highlights of some of the more significant new reporting requirements.

#### A. Filing Requirements – Who, When and How

Unlike Form N-SAR, which is required to be filed semi-annually 60 days after a fund's fiscal year end and fiscal half-year end, registered investment companies and ETFs, with the exception of face-amount certificate companies, will be required to file Form N-CEN annually within 75 days after the investment company's fiscal year end.<sup>19</sup> Funds that offer multiple series will be required to report information in Part C of Form N-CEN for each series separately.

As with Form N-SAR, the sections of Form N-CEN that a fund is required to complete will depend on the type of registrant. Below is a description of the parts of Form N-CEN:

- *Part A* – General Information for All Registered Investment Companies.
- *Part B* – Information About the Registrant for All Registered Investment Companies.
- *Part C* – Additional Questions for Management Investment Companies Other Than SBICs.
- *Part D* – Additional Questions for Closed-End Management Investment Companies and SBICs.
- *Part E* – Additional Questions for ETFs and Exchange-Traded Managed Funds. (ETMFs) Including Those Structured as UITs.
- *Part F* – Additional Questions for UITs.
- *Part G* – Attachments.

Form N-CEN will be required to be filed in XML via the SEC's EDGAR system. The SEC believes that filing Form N-CEN in XML will enhance the ability of the SEC, as well as investors and other potential users, to analyze the data reported both on a fund-by-fund basis and across funds.

#### B. Information Required to Be Reported on Form N-CEN

##### 1. Part A and Part B – Information About All Registered Investment Companies

Parts A and B require basic information about an investment company. A fund will be required to include its LEI,<sup>20</sup> material changes in the valuation of the fund's assets and information on the fund's books and records.<sup>21</sup> Below are some additional new requirements of Parts A and B of Form N-CEN:

- Information regarding whether the fund relied on any orders from the SEC granting the fund an exemption from any provisions of the 1940 Act, Securities Act of 1933 or Securities Exchange Act of 1934 during the period.
- Information regarding the receipt of any financial support from an affiliated entity.
- Information regarding whether an open-end fund made any payments to shareholders or reprocessed shareholder accounts as a result of an NAV error, regardless of the source of the payment.



- Information with respect to any payments of dividends or distributions that required a written statement pursuant to Section 19(a) of the 1940 Act and rule 19a-1 thereunder.
- Information regarding whether an independent public accountant's report on internal controls noted any material weaknesses, and whether an independent public accountant issued an unqualified opinion with respect to its audit of the fund for the reporting period.

## **2. Part C – Additional Questions for Management Investment Companies Other than SBICs**

Form N-CEN, like Form N-SAR, requires each series of an investment company to report information regarding the fund's structure, investment strategies and fees. Below are highlights of the new information required by Part C:

- Information of any CFCs in which the fund may invest.
- Specific information for index funds, such as tracking difference and tracking error.
- Information regarding a fund's securities lending activities including:
  - o whether the fund is authorized to engage in securities lending and whether it loaned securities during the reporting period;
  - o the fees associated with securities lending activities;
  - o whether any borrower failed to return loaned securities by the contractual deadline with the result that the fund or its securities lending agent liquidated collateral pledged to secure the loaned securities, or that the fund was otherwise adversely impacted;
  - o whether a securities lending agent indemnifies the fund against borrower default and whether the fund exercised its indemnification rights;
  - o identifying information about each securities lending agent and cash collateral manager;
  - o whether the company made specific types of payments to securities lending agents or cash collateral managers during the reporting period; and
  - o the average monthly value of portfolio securities on loan and the net income from securities lending.<sup>22</sup>

## **3. Part D – Additional Questions for Closed-End Management Investment Companies and SBICs**

Part D requires specific information regarding the structure and operations of closed-end funds and SBICs. The majority of the information required by Part D is currently required by Form N-SAR or is reported in another format. Part D does, however, require new information on securities issued by closed-end funds and SBICs, including information relating to rights offerings and secondary offerings and information on any such offering during the reporting period and the type of security involved.

## **4. Part E – Additional Questions for ETFs and ETMFs Including Those Structured as UITs**

ETFs are currently subject to the same reporting requirements on Form N-SAR as other open-end funds, but are not required to report additional, more specialized information. The SEC believes the information collected on Part E could help the SEC in future policymaking with respect to ETFs. The information requirements of Part E include:

- Identifying information about authorized participants (APs).
- The dollar value of ETF shares that each AP purchased and redeemed from the ETF during the reporting period.
- Whether the ETF required an AP to post collateral to the ETF in connection with the purchase or redemption of ETF shares during the reporting period.
- Based on the dollar value paid for each creation unit purchased and redeemed by APs during the reporting period: (i) the average percentage of that value composed of cash; (ii) the standard deviation of the percentage of that value composed of cash; (iii) the average percentage of that value composed of non-cash assets and other positions exchanged on an in-kind basis; and (iv) the standard deviation of the percentage of that value composed of non-cash assets and other positions exchanged on an in-kind basis;
- Reporting of average fees.
- For ETFs that are UITs, information regarding whether the index tracked is constructed by an affiliated person of the fund and/or exclusively constructed by the fund and information regarding tracking difference and tracking error.

## 5. Part F – Additional Questions for UITs

Unlike Form N-SAR, Form N-CEN differentiates between UITs that are, and those that are not, separate accounts of insurance companies and requires the reporting of different types of information depending upon the type of UIT. For insurance company separate accounts, Part F requires census information for each security issued through the separate account. Part F also includes several requirements from Form N-SAR, including information relating to divestments under Section 13(c) of the 1940 Act.

## 6. Part G – Attachments

Each attachment to Form N-CEN is currently required by Form N-SAR, with the exception of attachments related to the provision of financial support. Additionally, Form N-CEN eliminates certain attachments required by Form N-SAR. Attachments are not required to be reported in XML.

## IV. Amendments to Certain Forms, Including Disclosure Requirements Relating to Securities Lending

The SEC adopted amendments to Forms N-1A, N-3 and N-CSR to include requirements for funds to disclose information about their securities lending activities.<sup>23</sup> The Amendments require funds to disclose in their SAIs (or, with respect to closed-end funds, Form N-CSR) the following dollar amounts for the most recently completed fiscal year (i) gross and net income from securities lending activities; (ii) fees and compensation in total and broken out by enumerated types; and (iii) a description of the services provided to the fund by the securities lending agent. The fees and compensation are required to be broken down into the following categories: (i) any share of revenue generated by the securities lending program paid to the securities lending agent or agents (the revenue split); (ii) fees paid for cash collateral management services, including fees deducted from a pooled cash collateral reinvestment vehicle, that are not included in the revenue split; (iii) administrative fees that are not included in the revenue split; (iv) fees for indemnification that are not included in the revenue split; (v) rebates paid to borrowers; and (vi) any other fees relating to the securities lending program that are not included in the revenue split, including a description of those fees.

In addition, the SEC adopted conforming amendments to Forms N-1A, N-3 and Form N-CSR and certain rules under the 1940 Act, including revising the certification requirements of Form N-CSR to cover a six-month period, rather than a three-month period, due to the rescission of Form N-Q.

## V. Compliance Dates

### A. Amendments to Forms N-PORT, N-Q and N-CSR

The new Form N-PORT and the Amendments to the certification requirements of Form N-CSR will be implemented on a tiered time frame based on the fund's asset size:<sup>24</sup>

- Larger entities and funds that, together with a “group of related investment companies,”<sup>25</sup> have net assets of \$1 billion or more as of the end of the fund's most recent fiscal year must comply with the requirements of new Form N-PORT and the Amendments to the certification requirements of Form N-CSR by **June 1, 2018** (i.e., larger entities must file their first Form N-PORT no later than July 30, 2018, reflecting data as of June 30, 2018).
- Smaller entities and funds that, together with a “group of related investment companies,” have net assets of less than \$1 billion as of the end of the fund's most recent fiscal year must comply with the requirements of new Form N-PORT and the Amendments to the certification requirements of Form N-CSR by **June 1, 2019** (i.e., smaller entities must file their first Form N-PORT no later than July 30, 2019, reflecting data as of June 30, 2019).

Additionally, the SEC will maintain as non-public all reports filed on Form N-PORT for the first six months following June 1, 2018, with the exception of portfolio information attached as exhibits to the Form for the fund's first and third fiscal quarters.

### B. Amendments to Forms N-CEN, N-SAR and Exhibits for N-CSR

The compliance date for the new Form N-CEN, rescission of Form N-SAR and other related Amendments is **June 1, 2018** for all funds.

## C. Amendments to Regulation S-X, Forms N-1A and N-3, and Related Amendments to Form N-CSR

Because the Amendments to Regulation S-X are largely consistent with existing disclosure practices, the SEC set a compliance date for Regulation S-X of **August 1, 2017**. This date will also apply to the Amendments to the SAI under Forms N-1A and N-3 and, for closed-end funds, Form N-CSR.

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<sup>1</sup> Investment Company Reporting Modernization, Investment Company Act Release No. 32314 (October 13, 2016) (Adopting Release), available at <https://www.sec.gov/rules/final/2016/33-10234.pdf>. The complete text of the amended rules and forms is included in the Adopting Release. The Amendments were proposed on May 20, 2015; see Investment Company Reporting Modernization, Investment Company Act Release No. 31610 (Proposing Release), available at <https://www.sec.gov/rules/proposed/2015/33-9776.pdf>.

<sup>2</sup> For purposes of this alert, the term “fund” or “funds” is used as a general term that refers to registered investment companies (other than face-amount certificate companies) and any separate series thereof. The Amendments apply to different categories of funds, each of which is described in the discussions below.

<sup>3</sup> See, e.g., Investment Company Liquidity Risk Management Programs, Investment Company Act Release No. 32315 (October 13, 2016), available at <https://www.sec.gov/rules/final/2016/33-10233.pdf> (Liquidity Release); Form ADV and Investment Advisers Act Rules, Investment Advisers Act Release No. 4509 (August 25, 2016), available at <https://www.sec.gov/rules/final/2016/ia-4509.pdf>; and Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 31933 (December 11, 2015), available at <https://www.sec.gov/rules/proposed/2015/ic-31933.pdf>.

<sup>4</sup> In connection with the adoption of Form N-PORT, the SEC is rescinding Form N-Q. Form N-Q requires most registered management investment companies to report their complete portfolio holdings to the SEC on a quarterly basis as of the end of their first and third quarters. This information now will be required by Form N-PORT.

<sup>5</sup> In connection with the adoption of Form N-CEN, the SEC is rescinding Form N-SAR. Form N-SAR required funds to report on a semi-annual basis (annually for UITs) a variety of census-type information to the SEC, including information relating to a fund’s organization, service providers, fees and expenses, portfolio strategies and investments, portfolio transactions and share transactions.

<sup>6</sup> Forms N-CSR and N-Q, as well as most other SEC filings, currently are filed in HTML format, which does not lend itself to the efficient gathering of information.

<sup>7</sup> The SEC also adopted liquidity classification information requirements to be included on Form N-PORT in the Liquidity Release. Please see the Fund Alert What You Need to Know About the SEC’s New Liquidity Risk Management Rule (November 2, 2016) for more information.

<sup>8</sup> Currently, funds must pay a one-time fee of \$219 to obtain an LEI and \$119 in annual maintenance costs and fees.

<sup>9</sup> Funds may report zero for maturities to which they have no exposure. Exposures to ranges outside of the listed maturities on Form N-PORT should be included in those exposures in the nearest maturity.

<sup>10</sup> A fund may determine whether an investment is considered “investment grade” by using its own methodology and/or the conventions of service providers, provided that the fund complies with the Methodology Requirements described above.

<sup>11</sup> See Investment Company Swing Pricing, Investment Company Act Release No. 32316 (October 13, 2016), available at <https://www.sec.gov/rules/final/2016/33-10234.pdf>.

<sup>12</sup> A fund may generally use its own methodologies and/or the conventions of its service providers in reporting on this item, provided that the fund complies with the Methodology Requirements described above.

<sup>13</sup> See the Liquidity Release.

<sup>14</sup> The options disclosure items encompass other investments with an option feature (such as swaptions), meaning that swaptions will be governed by the form’s disclosure requirements for both swaps and options.

<sup>15</sup> With respect to a derivatives contract with an underlying asset that is an index or basket of investments whose components are publicly available on a website as of the fund’s balance sheet date, or if the notional amount of the holding does not exceed one percent of the fund’s NAV as of the close of the period, the fund will be required to disclose a description sufficient to identify the underlying investment. For derivatives in which the notional

value of the derivative represents more than one percent of the NAV of the fund, and the components of the underlying index or custom basket are not publicly available, the fund will be required to list the 50 largest components in the index or custom basket and any other components where the notional value of the component exceeds one percent of the value of the index or custom basket. For each investment separately listed, the fund will include the description of the underlying investment as would be required by Article 12 of Regulation S-X as part of the description, the quantity held, the value at the close of the period, and the percentage value when compared with the custom basket's net assets.

<sup>16</sup> The counterparty is not required to be identified for exchange-traded options and swaps or centrally cleared options and swaps.

<sup>17</sup> In addition, funds also will be required to reconcile the total of unrealized appreciation/depreciation with the total variation margin receivable or payable on the related balance sheet, which will link the information in the new schedule with the related balance sheet.

<sup>18</sup> The Proposing Release included a proposed amendment to require funds to identify illiquid investments. The SEC did not adopt those amendments for various reasons, including the adoption of a requirement for funds to disclose information about portfolio-level liquidity. See the Liquidity Release. In addition, with respect to information proposed to be required regarding a fund's securities lending activities and cash collateral management, the SEC determined to require such disclosure in the fund's statement of additional information (SAI) (or Form N-CSR for closed-end funds) or in new Form N-CEN.

<sup>19</sup> UITs will be required to file Form N-CEN within 75 days of the calendar year end.

<sup>20</sup> See Section I.B.1 for a brief discussion of LEIs.

<sup>21</sup> The SEC also adopted corresponding amendments to Forms N-1A, N-2, N-3, N-4 and N-6 to exempt funds from those forms' respective books and records disclosure requirements if the information is provided in a fund's most recent report on Form N-CEN.

<sup>22</sup> Additional information regarding a fund's securities lending activities is required to be included in a fund's SAI. See Section IV for more information on these final requirements

<sup>23</sup> The Proposing Release recommended such disclosure be included in funds' financial statements. After further consideration, the SEC determined the more appropriate place to include such disclosure would be in the funds' SAIs or, with respect to closed-end funds, Form N-CSR.

<sup>24</sup> The rescission of Form N-Q, while generally following the tiered time frame above for Form N-PORT, will be delayed an additional two months in order for entities to comply with the 60-day filing requirements of their final Form N-Q for the reporting period preceding the filing of their first Form N-PORT. As such, Form N-Q will be rescinded on August 1, 2018 for larger entities and August 1, 2019 for smaller entities.

<sup>25</sup> Rule 0-10 of the Investment Company Act [17 CFR 270.0-10] defines the term as "two or more management companies (including series thereof) that (i) hold themselves out to investors as related companies for purposes of investment and investor services, and (ii) either: (A) have a common investment adviser or have investment advisers that are affiliated persons of each other; or (B) have a common administrator; and [...] [i]n the case of a [UIT], the term group of related investment companies shall mean two or more [UITs] (including series thereof) that have a common sponsor."