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SEC Delays Filing Requirement for Form N-PORT

On Dec. 8, 2017, the Securities and Exchange Commission (the Commission) issued a release delaying EDGAR filing requirements for Form N-PORT for nine months as a result of cybersecurity concerns.¹ Consequently, larger fund groups (those with net assets of at least \$1 billion) will be required to begin submitting reports on Form N-PORT via EDGAR by April 30, 2019 (as opposed to the original requirement to file by July 30, 2018), and smaller fund groups will be required to begin submitting reports on Form N-PORT by April 30, 2020 (originally July 30, 2019). During the delay, funds will continue to file Form N-Q. The June 1, 2018, compliance date for filing Form N-CEN was not delayed.

During the nine-month delay, larger fund groups technically will continue to be subject to the Form N-PORT requirement, and their compliance date will not change. In lieu of filing reports with the Commission, Temporary Rule 30b1-9(T) will require larger fund groups to maintain in their records the information that is required to be included in Form N-PORT. While this information is not required to be stored in the extensible markup language, or XML, format required by Form N-PORT, larger fund groups must still prepare and maintain in their records the information that is required to be included on Form N-PORT.² However, the Commission suggests that maintaining the information in an XML format would facilitate the filing of Form N-PORT following the nine-month delay, as funds can use the delay to gain greater facility with the form's structured reporting format.³ The maintained information will be subject to Commission recordkeeping requirements⁴ and, like all such records, will be subject to examination by Commission staff.⁵ Accordingly, it is important that the information required to be compiled for Form N-PORT during this delay be maintained in an easily accessible and, presumably, centralized location.

Smaller fund groups will receive an extension of their compliance date and will not be subject to a requirement to maintain the information required by Form N-PORT during the delay.

New Compliance and Filing Due Dates

	Larger Fund Groups	Smaller Fund Groups
N-PORT – compliance date	June 1, 2018 (<i>unchanged</i>)	March 1, 2020
N-PORT – initial filing due date (reporting period)	April 30, 2019 (month ending March 31, 2019)	April 30, 2020 (month ending March 31, 2020)
N-PORT – initial filing with information made publicly available (reporting period)	Oct. 30, 2019 (month ending Sept. 30, 2019) ⁶	April 30, 2020 (month ending March 31, 2020)
N-CEN – initial filing due date	75 days after the end of the fiscal year ending on or after June 1, 2018 (<i>unchanged</i>)	75 days after the end of the fiscal year ending on or after June 1, 2018 (<i>unchanged</i>)

Background and Reasons for the Delay

On Oct. 13, 2016, the Commission adopted new rules and forms, including Form N-PORT, that were designed to modernize the reporting and disclosure of information by investment companies.⁷ Form N-PORT requires reporting of a fund's complete portfolio holdings and additional information that will facilitate risk analysis and other Commission oversight. Reports on Form N-PORT are required to be filed in an XML-structured data format no later than 30 days after the close of each month, using the Commission's EDGAR system.⁸ In general, reports on Form N-PORT for every third month of each fiscal quarter will be available to the public 60 days after the end of the fiscal quarter, but reports for the first and second months of each quarter and portions of reports for the third month will be kept nonpublic permanently.⁹

The Commission stated in the Release announcing the delay that the delay takes into account sound data security practices and protocols for sensitive, nonpublic information.¹⁰ Notably, this delay follows a recent disclosure by Commission Chairman Jay Clayton that the EDGAR system was compromised by a cyberattack.¹¹ The Commission is aware that some Form N-PORT data items could be competitively sensitive and that a breach could result in harm to the reporting funds.¹² As the Commission works to adopt measures designed to improve EDGAR's functionality and security, the Commission is concerned that these measures could negatively affect EDGAR's ability to validate and accept Form N-PORT filings in a timely manner, in particular during peak filing periods.¹³ Efforts to address any such potential effects are underway, according to the Commission, but the delay of Form N-PORT filing requirements provides time for the Commission to complete its review and to implement and test any resulting modifications to the EDGAR system.¹⁴

Details of the Delay

As a result of the Commission's action, funds in larger fund groups, which have a compliance date of June 1, 2018, and previously would have been required to submit their first reports on Form N-PORT on EDGAR for the month ending June 30, 2018 (no later than July 30, 2018), will not become subject to the requirement to file Form N-PORT on EDGAR until April 1, 2019. Thus, their first EDGAR filing will be for the month ending March 31, 2019, and will be due no later than April 30, 2019. Until that time, they will comply with their Form N-PORT obligation by maintaining the required information in their records under Temporary Rule 30b1-9(T). Funds in smaller fund groups will have their compliance date extended from June 1, 2019, to March 1, 2020, so they will not be subject to a Form N-PORT requirement until the month ending March 31, 2020 (due no later than April 30, 2020). Funds will continue to file public reports on Form N-Q until they begin filing reports on Form N-PORT using EDGAR.

When it adopted Form N-PORT, the Commission determined that having a six-month time period during which larger fund groups are required to file reports on Form N-PORT, but during which those reports are not disclosed publicly, will allow funds and the Commission to make adjustments to fine-tune the technical specifications and data validation processes.¹⁵ The

Commission is preserving this six-month time period, so larger fund groups' reports for the periods ending March 31, 2019, through Sept. 30, 2019, will be kept nonpublic.¹⁶ The Commission did not modify the compliance or filing dates with respect to Form N-CEN, which will have its reports made public immediately upon filing and, therefore, does not raise the same cybersecurity concerns.¹⁷ The compliance date for Form N-CEN continues to be June 1, 2018.

Effect on Liquidity Risk Management Rule

The EDGAR reporting requirements added to Form N-PORT by the Commission when it adopted its liquidity risk management rule were also delayed by the Temporary Rule.¹⁸ That release adopted additional reporting requirements on Form N-PORT, specifically requiring a fund to report monthly position-level and aggregate liquidity classification information and its highly liquid investment minimum to the Commission. The liquidity rule and related reporting requirements have a compliance date of Dec. 1, 2018, for larger fund groups, and June 1, 2019, for smaller fund groups. In effect, therefore, both larger fund groups and smaller fund groups will have nine-month delays of the periods before which they must file liquidity information on Form N-PORT that is made publicly available.¹⁹ Larger fund families will only be required to comply with Temporary Rule 30b1-9(T) with respect to these liquidity-related additions to Form N-PORT based on the Dec. 1, 2018, compliance date.²⁰

Several trade groups have submitted letters to the Commission requesting delay of significant parts of the liquidity risk management rule and its related reporting requirements.²¹ The delay for filing Form N-PORT will not preclude the Commission from considering the requests for delay contained in those letters.

¹ Investment Company Reporting Modernization, Release Nos. 33-10442, 34-82241, IC-32936 (Dec. 8, 2017), 82 Fed. Reg. 58,731 (Dec. 14, 2017) (<https://www.federalregister.gov/d/2017-26922>), ("Release").

² *Id.* at 58,736.

³ *Id.* at 58,733 n.28.

⁴ Specifically, the information will be subject to Rule 31a-2(a)(2), which provides that funds must preserve applicable records for a period not less than six years from the end of the fiscal year, the first two years in an easily accessible place. As fund records, the information will be subject to the antifraud provisions of Section 34(b) of the Investment Company Act of 1940.

⁵ See Release, *supra* note 1, at 58,733.

⁶ Only reports for the third month of each fiscal quarter will have information made public. If the month ending Sept. 30, 2019, is not the third month of a fiscal quarter, then a later report will be first to have information made public.

In addition, we assume that the Commission did not intend the six-month period of nonpublic filings to include filings for the month ending Sept. 30, 2019. See *infra* note 16. If this is incorrect, then the first filing that may have information made public would be the filing for the month ending Oct. 31, 2019 (or the next filing that is for the third month of a fiscal quarter).

⁷ Investment Company Reporting Modernization, Release Nos. 33-10231, 34-79095, IC-32314 (Oct. 13, 2016), 81 Fed. Reg. 81,870 (Nov. 18, 2016) (<https://www.federalregister.gov/d/2016-25349>). At the same time, the Commission also amended Form N-PORT to require disclosure of certain information regarding

the liquidity of a fund's holdings. Investment Company Liquidity Risk Management Programs, Release Nos. 33-10233, IC-32315 (Oct. 13, 2016), 81 Fed. Reg. 82,142 (Nov. 18, 2016) (<https://www.federalregister.gov/d/2016-25348>). For more information regarding these rulemakings, including Form N-PORT requirements, please refer to Fund Alert, "Investment Company Reporting Modernization Amendments – A Summary of an Extensive Overhaul" (Nov. 7, 2016); Fund Alert, "What You Need to Know About the SEC's New Liquidity Risk Management Rule" (Nov. 2, 2016) (http://www.stradley.com/~media/Files/Publications/2016/Fund_Alert_November_2_2016.pdf).

⁸ See Rule 30b1-9.

⁹ General Instruction F to Form N-PORT.

¹⁰ Release, *supra* note 1, at 58,732 – 33.

¹¹ Chairman Jay Clayton, Statement on Cybersecurity (Sept. 20, 2017) (<https://www.sec.gov/news/public-statement/statement-clayton-2017-09-20>).

¹² See Release, *supra* note 1, at 58,733; Investment Company Reporting Modernization, *supra* note 5, at 81,908.

¹³ Release, *supra* note 1, at 58,733.

¹⁴ *Id.*

¹⁵ Portfolio information attached as exhibits to Form N-PORT for the first and third quarters of a fund's fiscal year was to be made public during this period, to ensure that information about funds' portfolio holdings would continue to be publicly available to investors and other users. This practice will not change.

¹⁶ The Release states that reports for the periods ending March 31, 2019, through Sept. 30, 2019, will be kept nonpublic to preserve the six-month nonpublic period. Release, *supra* note 1, at 58734. However, this would be a seven-month period. We believe the Commission may have intended that the nonpublic period would end with (i.e., not include) the report for the period ending Sept. 30, 2019.

¹⁷ Form N-CEN, which requires annual reports of census-type information in a structured data format, was adopted in the same rulemaking as Form N-PORT.

¹⁸ See Investment Company Liquidity Risk Management Programs, *supra* note 5.

¹⁹ In the case of larger fund groups, which previously were required to begin filing liquidity information on Form N-PORT no later than Jan. 30, 2019, there will be only a three-month period before they have to begin making filings with liquidity information, by April 30, 2019. However, they will also have the benefit of the six-month period during which reports will not be publicly disclosed.

²⁰ Release, *supra* note 1, at 58,733 n.25.

²¹ See Letter from Dorothy Donohue (<https://www.sec.gov/comments/s7-16-15/s71615-2674225-161457.pdf>), Acting General Counsel, ICI, to Brent J. Fields, Secretary, Securities and Exchange Commission (Nov. 3, 2017); Letter from Timothy W. Cameron (<https://www.sifma.org/wp-content/uploads/2017/10/SIFMA-AMG-LRM-Letter-to-Chair-and-Commissioners.pdf>), Head, and Lindsey W. Keljo, Managing Director and Associate General Counsel, SIFMA AMG, to Chairman Jay Clayton, Commissioner Kara Stein, and Commissioner Michael Piowar, Securities and Exchange Commission (Sept. 12, 2017).



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