

ALERTS

SEC Delays Form N-PORT Filing Requirements and Adopts Related Temporary Final Rule

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On Dec. 8, 2017, the Securities and Exchange Commission (“SEC”) issued a release delaying the dates by which certain registered funds must begin filing new Form N-PORT with the SEC (“Release”).^[1] The SEC took this action to provide time to complete and review modifications to its Electronic Data Gathering, Analysis, and Retrieval system (“EDGAR”) that “are necessary to process these filings effectively and securely, given their frequency, volume, and complexity, as well as the nonpublic nature of much of the data.” The SEC also adopted a temporary final rule, Rule 30b1-9(T) under the Investment Company Act of 1940 (“1940 Act”), under which funds must maintain information required by Form N-PORT commencing on the compliance dates applicable to them for the reporting of such information on Form N-PORT, notwithstanding the delayed dates as of which their filings of the form are now required to begin. In addition, the Release delays the effective date for the rescission of Form N-Q in view of the delay of the dates as of which funds must commence filing Form N-PORT.

Background

Form N-PORT and various other new and revised reporting requirements applicable to investment companies registered under the 1940 Act were adopted by the SEC in October 2016 to modernize investment company reporting.^[2] Under these requirements, companies registered under the 1940 Act as management investment companies (other than money

market funds and small business investment companies) and 1940 Act registered exchange-traded funds organized as unit investment trusts will be required to file on EDGAR monthly reports on Form N-PORT (not later than 30 days after the end of each month) containing information relating to, among other things, their portfolio holdings in an extensible markup language structured data format. Form N-PORT will replace Form N-Q and is designed to provide the SEC with more timely information about a fund's portfolio holdings and information regarding portfolio risk, portfolio liquidity and the use of derivatives.

Funds that are part of a "group of related investment companies" having net assets of \$1 billion or more ("larger fund groups") were required to begin filing Form N-PORT monthly no later than July 30, 2018 (reflecting data for June 2018).[3] Funds that are part of a group of related investment companies having net assets of less than \$1 billion ("smaller fund groups") were required to begin filing Form N-PORT monthly no later than July 30, 2019 (reflecting data for June 2019).

What Did the SEC Do?

The Release delays by nine months the dates as of which funds must begin filing on EDGAR their reports on Form N-PORT. Funds in larger fund groups are now required to begin their filings of Form N-PORT no later than April 30, 2019 (reflecting data for March 2019). Funds in smaller fund groups are now required to begin their filings of Form N-PORT no later than April 30, 2020 (reflecting data for March 2020).

The Release also delays the Form N-PORT compliance date for funds in smaller fund groups until March 1, 2020 to correspond with the delay in the date as of which such funds will be required to file Form N-PORT. However, the Form N-PORT compliance date for funds in larger fund groups has not been similarly delayed.

To address the disparity between Form N-PORT compliance dates and the dates by which a fund's filings of Form N-PORT will begin, the SEC adopted Rule 30b1-9(T). The rule provides that, until April 1, 2019, funds must satisfy their Form N-PORT reporting obligations by maintaining in their records the information required by Form N-PORT. Under the rule, such information is deemed to be a record required to be maintained by Section 31(a)(1) of the 1940 Act.[4] This information, as such, will be subject

to examination by the SEC staff in accordance with Section 31(b) of the 1940 Act.

In addition, the Release delays the date for rescission of Form N-Q until May 1, 2020 and delays by nine months the dates as of which revised Form N-CSR certification requirements become effective.[5] The SEC has not delayed the June 1, 2018 compliance date applicable to the filing of reports on Form N-CEN (which replaces Form N-SAR), which reports must be filed not later than 75 days following the end of a fund's fiscal year (or, in the case of a unit investment trust, not later than 75 days following the end of the calendar year).

What's the Impact of the SEC's Actions?

- Funds in larger fund groups must begin preparing and maintaining on a monthly basis all information required by Form N-PORT no later than July 30, 2018 (reflecting data for June 2018), notwithstanding that they are not required to begin EDGAR filings of Form N-PORT until April 30, 2019.
- In connection with the adoption of Rule 22e-4, which generally requires funds registered as open-end management investment companies (i.e., mutual funds), other than money market funds and certain exchange-traded funds, to adopt liquidity risk management programs, the SEC required the reporting of certain portfolio liquidity-related information on Form N-PORT commencing for the month of December 2018, in the case of funds in larger fund groups, and commencing for the month of June 2019, in the case of funds in smaller fund groups.[6] These dates precede the dates as to which funds are now required to begin filing reports on Form N-PORT. As a result, under Rule 30b1-9(T), open-end management investment companies (other than money market funds) will be required to begin maintaining as a required record the information relating to portfolio liquidity specified by Form N-PORT commencing for the month of December 2018 (for funds in larger fund groups) or June 2019 (for funds in smaller fund groups), notwithstanding that funds may, as of those dates, have not yet begun to file reports on Form N-PORT.
- Funds in both larger fund groups and smaller fund groups must continue to file reports on Form N-Q until they commence filings on Form N-PORT.[7]

- The revised N-CSR certification requirement becomes effective March 1, 2019 for funds in larger fund groups and March 1, 2020 for funds in smaller fund groups.

Summary of Revised Form N-PORT Recordkeeping and Filing Requirements

	Commence Preparing and Maintaining Information Required by Form N-PORT	Commence Monthly Filings of Form N- PORT on EDGAR
Larger Fund Groups	By July 30, 2018 (reflecting data for June 2018) (excluding portfolio liquidity-related information) Portfolio liquidity-related information, by Jan. 30, 2019 (reflecting data for December 2018)	By April 30, 2019 (reflecting data for March 2019)
Smaller Fund Groups	Portfolio liquidity-related information only, by July 30, 2019 (reflecting data for June 2019)	By April 30, 2020 (reflecting data for March 2020)

Authored by Kenneth S. Gerstein and Karen Spiegel.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] Investment Company Reporting Modernization, ICA Release No. 32936 (Dec. 8, 2017).

[2] Investment Company Reporting Modernization, ICA Release No. 32314 (Oct. 13, 2016).

[3] For this purpose, the SEC uses the definition of “group of related investment companies” set forth in Rule O-10 under the 1940 Act under which the term means two or more management investment 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. With respect to unit investment trusts, Rule O-10 defines

the term to mean two or more unit investment trusts (including series thereof) that have a common sponsor.

[4] Neither Rule 30b1-9(T) nor the recordkeeping rules under the 1940 Act require that information maintained in a fund's records be maintained in an extensible markup language structured data format. However, the SEC stated its belief in the Release (at note 28) that doing so would facilitate filings of Form N-PORT when such filings become required since funds would gain experience with use of the structured data reporting format.

[5] The SEC revised the Form N-CSR certification when it adopted Form N-PORT to reflect the elimination of Form N-Q filings for the first and third quarters of a fund's fiscal year. As revised, the certification will require a statement that the certifying officer has disclosed any change in internal control over financial reporting that occurred during the most recent fiscal half-year, rather than during the most recent fiscal quarter as currently required.

[6] See Liquidity Risk Management Programs, ICA Release No. 32315 (Oct. 13, 2016).

[7] Money market funds also currently are required to file reports on Form N-Q and file monthly reports on Form N-MFP, but (as previously noted) will not be required to file Form N-PORT. In the Release (at note 35), the SEC states that, notwithstanding the delayed rescission date for Form N-Q, money market funds do not have to file reports on Form N-Q after Aug. 1, 2019 (the original Form N-Q rescission date).

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