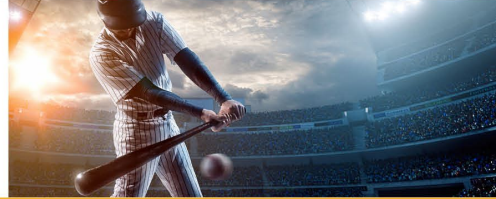


September 13, 2024

Client Alert | Investment Management



Swing Pricing Strikes Out Again in Recent SEC Rulemaking

The U.S. Securities and Exchange Commission (SEC), in a 3-2 vote, adopted amendments to fund reporting requirements on Form N-PORT and Form N-CEN and provided guidance on liquidity risk management programs (LRMPs) on August 28 (Adopting Release).¹ Among other things, the amendments increase the filing and publication frequency of reporting information for funds filing on Form N-PORT and require funds filing on Form N-CEN to provide information about liquidity classification service providers.² In connection with these amendments, the SEC did not proceed with adopting proposed changes to require mandatory swing pricing or impose a “hard close” cut-off time on when investors can buy and sell their funds (Proposing Release), consistent with comment letters from Stradley Ronon and many others on the proposal.³

Key Takeaways

- Putting systems in place to address the significant increase in the amount and frequency of data required, as well as the expedited filing timelines, will be a heavy lift for funds and their advisers. The effective date of November 17, 2025, for many fund complexes compounds this burden, given that SEC rule changes relating to the Names Rule and privacy also require implementation on a similar timeline.
- Concerns remain about whether the SEC addressed comments relating to the potential for more frequent public disclosure of data to enable front-running and other predatory trading harmful to funds and their shareholders.
- LRMP administrators should review their current processes for consistency with the new SEC guidance on intra-month liquidity classifications, the treatment of cash (in particular

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).

² For the Form N-PORT requirements, the term “fund” refers to registered open-end funds, registered closed-end funds and exchange-traded funds (ETFs) organized as unit investment trusts and excluding money market funds and small business investment companies. For the Form N-CEN requirements, the term “fund” refers to the foregoing funds with the addition of money market funds, small business investment companies and registered unit investment trusts. See Adopting Release at 4.

³ [Open-End Fund Liquidity Risk Management Programs and Swing Pricing; Form N-PORT Reporting](#), Release No. IC-34746 (November 2, 2022). See our previous client alert, [SEC Proposes Extensive Changes to Open-End Fund Liquidity Framework](#) (November 30, 2022) and [Comment Letter of Stradley Ronon Stevens & Young, LLP](#) (February 14, 2023).

as it relates to foreign currency investments) and the determination of highly liquid investment minimums.

- Although mandatory swing pricing and a hard close were not adopted at this time, the SEC has announced that it is considering re-proposing changes to the requirements relating to open-end fund liquidity and dilution management.⁴ Although this re-proposal is not expected in 2024, SEC action on these issues should be monitored carefully, as the SEC could consider following an approach (i.e., mandatory liquidity fees) recently adopted for money market funds.
- The SEC’s decision to not adopt the proposed elimination of the Liquidity Rule’s less liquid investment classification was a significant win for bank loan funds.

Reporting Requirements

Form N-PORT

As proposed, the SEC adopted two key amendments and conforming changes to Form N-PORT. The first amendment requires the filing of Form N-PORT on a monthly basis, as opposed to the current quarterly filing requirement. These filings must be made with the SEC within 30 days of month-end — far more quickly than the current requirement to file within 60 days after the end of the fiscal quarter. In the SEC’s view, providing funds with 30 days to file information after the end of a given month balances the need for timely information with considerations about the time and costs for funds to gather and file information accurately, as well as the sensitivity of the filed information.

The second amendment increases the number of publicly available N-PORT reports per year from four to 12, with the SEC making each filing public 60 days after the end of the relevant month. The SEC stated its belief that investors benefit from information about a fund’s portfolio holdings to make more informed investment decisions and adopted the amendments summarized below, despite concerns raised by commenters and SEC Commissioners Hester Peirce and Mark Uyeda about the potential for predatory trading based on the increased public disclosure.⁵

N-PORT	Current	Proposed	Final
Filing frequency increased from four to 12 times/year.	Filers file for each month of a fiscal quarter 60 days after the end of the fiscal quarter.	Filers would file 30 days after the end of each month.	Adopted as proposed.

⁴ [SEC Agency Rule List – Spring 2024](#) (posted July 5, 2024); see also [Regulatory Flexibility Agenda](#), Release Nos. 33-11287, 34-100157, IA-6605, IC-35194 (May 16, 2024).

⁵ Commissioner Mark Uyeda, [Statement on Form N-PORT and Form N-CEN Reporting Amendments; Guidance on Open-End Fund Liquidity Risk Management Programs](#) (August 28, 2024) (noting that the issue of predatory trading is heightened by the increasing use of artificial intelligence); Commissioner Hester Peirce, [Too Short to Report: Statement on Adoption of Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs](#) (August 28, 2024).

N-PORT	Current	Proposed	Final
Public disclosure increased from four to 12 times/year.	Only information for the third month of a fiscal quarter is made public (within 60 days after the end of the fiscal quarter).	Information for each month would be made public 60 days after the end of the month.	Adopted as proposed. ⁶

The amendments also include other changes to Form N-PORT, including clarifying entity identifier information⁷ and adjusting the requirements for return and flow information,⁸ as well as miscellaneous securities.⁹ The SEC did not adopt the proposal to require a fund to attach a monthly schedule of investments complying with generally accepted accounting principles to each Form N-PORT.¹⁰

Form N-CEN

The Form N-CEN amendments require new information about liquidity classification service providers.¹¹ In particular, under these amendments, funds that are subject to the Liquidity Rule will be required to:

- Name each liquidity classification service provider.
- Provide identifying information — including the legal entity identifier, if available, and location — for each liquidity classification service provider.
- Identify if the liquidity classification service provider is affiliated with the fund or its investment adviser.
- Identify the asset classes for which that liquidity classification service provider provided classifications.
- Indicate whether the liquidity classification service provider was hired or terminated during the reporting period.¹²

Effective Dates

Funds will be required to comply with the new Form N-PORT and Form N-CEN requirements for reports filed on or after November 17, 2025, except for fund groups with net assets of less than \$1 billion, which will have until May 18, 2026 to comply with the Form N-PORT amendments.

⁶ Certain information will remain nonpublic under the Adopting Release (e.g., liquidity classifications for individual portfolio investments). However, the commission staff may publish aggregate or other anonymized information about the nonpublic elements of reports on Form N-PORT. See Adopting Release at 32.

⁷ Adopting Release at 46.

⁸ Adopting Release at 44.

⁹ Adopting Release at 45.

¹⁰ Adopting Release at 42.

¹¹ For the Form N-CEN requirements, the term “liquidity classification service provider” refers to service providers a fund uses to fulfill the requirements of the Liquidity Rule.

¹² Adopting Release at 47.

LRMP Guidance

Frequency of Liquidity Classifications

Under the Liquidity Rule, liquidity classifications must be reviewed monthly unless changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of a fund's investment classifications, in which case such classifications must be reviewed more frequently. The rule requires funds to adopt and implement policies and procedures reasonably designed so that funds can conduct these more frequent classifications if required. In the Adopting Release, the SEC provided additional examples of considerations that funds may wish to consider when determining if more frequent liquidity classifications are needed, such as when changes in portfolio composition are reasonably expected to materially affect a classification (e.g., if a fund substantially increases the size of a position), and when an investment is newly acquired during the intra-month period and is reasonably expected to result in material changes to the liquidity profile of a fund.¹³

Meaning of 'Cash'

Under the Liquidity Rule, when making liquidity classifications, a fund must consider the time in which it reasonably expects an investment to be "convertible to cash" without significantly changing the market value of the investment. The SEC provided guidance on the conversion of foreign currency investments into U.S. dollars. In the Adopting Release, the SEC clarified that, for foreign currency investments, funds must factor in the amount of time it is reasonably expected to take to convert a reasonably anticipated trade size of that foreign currency into U.S. dollars under current market conditions without significantly changing the currency exchange rate (i.e., as opposed to the amount of time it would take to convert such investment into the local foreign currency). In doing this calculation, the SEC noted a fund can assume that it initiates a hypothetical currency conversion at the same time as the hypothetical sale of the international investment, rather than after the sale of the investment is settled in the local currency. The SEC also addressed the impact of currency controls in this context. LRMP administrators for funds with foreign currency investments should review this guidance carefully in considering the impact of currency controls.¹⁴

Determining and Reviewing Liquidity Minimums

In the Adopting Release, the SEC reiterated certain aspects of its previous guidance regarding how a fund should determine its highly liquid investment minimum and what factors to consider in the determination. For example, the SEC reiterated that (1) a fund that invests significantly in less liquid or illiquid investments, such as a bank loan fund, generally should consider establishing a highly liquid investment minimum that is higher than that of a fund that is more liquid;¹⁵ and (2) while lines of credit or similar arrangements can be considered when setting a

¹³ Adopting Release at 50.

¹⁴ Adopting Release at 51-55.

¹⁵ See Adopting Release at 56. The SEC initially proposed removing the "less liquid" classification category and amending the definition of "illiquid investments" to include investments that funds reasonably expect are not able to be converted to U.S. dollars in seven calendar days or less without significantly changing the market value of the investment. See Proposing Release at 60. The Proposing Release noted that filings on Form N-PORT show that over 90% of bank loan investments reported by open-end funds are currently classified as "less liquid." Therefore, if the proposed change had been adopted, certain bank loan funds would have needed to negotiate shortened settlement cycles or alternatively consider changing their strategies, using another investment vehicle structure, or liquidating. The SEC did not adopt this change in the recently finalized rule amendments.

minimum, the SEC believes that liquidity risk management is better conducted primarily through portfolio construction.¹⁶

For more information, contact:



David W. Grim
Partner-in-Charge,
Washington, D.C.
Co-Chair, Investment
Management
202.507.5164
dgrim@stradley.com



Kristin H. Ives
Partner
215.564.8037
kives@stradley.com



Brian Crowell
Partner
215.564.8082
bcrowell@stradley.com



Geena Marzouca
Associate
202.507.6408
gmarzouca@stradley.com



Grace Wydeven
Associate
215.564.8145
gwymydeven@stradley.com

¹⁶ Adopting Release at 56.