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SEC Division of Investment Management Provides Updates to the Investment Company Reporting Modernization Frequently Asked Questions

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On November 14, 2018, the Staff of the Securities and Exchange Commission (SEC) Division of Investment Management updated its frequently asked questions (FAQs) on its fund reporting rules relating to the investment company reporting modernization reforms adopted in October 2016.¹ The Staff regularly updates the FAQs to address additional questions. The recently released questions and responses address issues within the four categories of Compliance Dates and General Filing Obligations, Form N-PORT, Regulation S-X and Form N-CEN.

Importantly, the FAQs clarified items in Form N-PORT by explaining (i) whether a fund may report monthly returns without deducting sales loads and redemption fees, (ii) whether a fund must continue to file reports if a registrant or series is terminated, and (iii) whether a fund with an effective registration statement without publicly offered shares must file Form N-Pc

Compliance Dates and General Filing Obligations

Issue	New SEC Guidance
<p>Form N-CEN (Items C.20 and E.5)</p>	<p>The 2016 fund liquidity programs adopting release amended Form N-CEN to include disclosure Items C.20 (which requests information about a registrant’s lines of credit, interfund lending and interfund borrowing) and E.5 (which requires a fund to disclose whether it is an In-Kind Exchange-Traded Fund (In-Kind ETF)). December 1, 2018, is the compliance date for responding to these two disclosure items for funds that, together with other investment companies in the same group of related investment companies, have net assets of \$1 billion or more as of the end of the most recent fiscal year.</p> <p>The SEC clarified that a fund with a fiscal year-end that falls before December 1, 2018, should not include a response to these two items on Form N-CEN. Funds should only begin responding to these items when their fiscal year-ends fall on or after December 1, 2018.</p>

¹ The full text of the changes to the FAQs is [available here](#).

Form N-PORT, Regulation S-X and Form N-CEN

Form N-PORT

Issue	New SEC Guidance
<p>Monthly Total Returns Reports (Item B.5.a)</p>	<p>Item B.5.a requires funds to report monthly total returns for each of the preceding three months. Calculation methodologies in Forms N-1A and N-3, both intended for annual reporting, require a deduction of sales loads and redemption fees charged to all shareholder accounts. No one methodology outlines how funds would pro-rate sales loads and redemption fees to reflect net monthly reporting, and funds could take a variety of approaches.</p> <p>The Staff indicated that it would not object if funds reported returns without deducting sales loads and redemption fees charged to all accounts. In the answer, the SEC staff noted that deducting sales loads and redemption fees over an indefinite number of reports could provide investors with the impression that these are ongoing fees and overstate the effect on performance. If funds determine to report returns without deducting sales loads and redemption fees, this should be noted in Part E (explanatory notes).</p>
<p>Filing Obligations for Terminated Registrants or Series</p>	<p>A registrant or series that has liquidated, merged or otherwise been terminated and has no remaining investors or investments but has not yet deregistered is not required to file reports on Form N-PORT. The SEC determined that filing a report in these circumstances would not provide relevant information to the necessary parties.</p>
<p>Filing Obligations for a New Fund with an Effective Registration Statement</p>	<p>A fund with an effective registration statement whose shares have not yet been publicly offered is not required to file Form N-PORT. However, a new fund that publicly offers shares for the first time would be required to file its first Form N-PORT report no later than 30 days after the end of that month.</p>

Regulation S-X

Issue	New SEC Guidance
<p>Funds with Index or Basket of Investments as Underlying Asset (Article 12)</p>	<p>Where the underlying asset is an index or basket of investments, the fund must assess whether the notional amount of a derivative contract exceeds one percent of the net asset value of the registrant as of the close of the period. If so, the fund must disclose the 50 largest components in the index or basket. The fund must also disclose any other components where the notional value for that component exceeds one percent of the “notional value of the index or custom basket.”</p> <p>To illustrate the performance of these calculations, the SEC provided a specific example in the updated FAQs. The “notional value of the index or custom basket” is the sum of the notional values of all the individual components of the index or custom basket. In the Staff’s example, the notional value of the custom basket was \$101. Therefore, if the fund was required to disclose its 50 largest components, it would also need to disclose each additional component whose notional value exceeds \$1.01.</p>
<p>Derivatives with Index or Basket of Investments as Underlying Asset (Article 12)</p>	<p>Article 12 of Regulation S-X requires disclosure for derivatives where the underlying asset is an index or custom basket of investments. In these circumstances, funds must disclose the percentage value of certain components as compared to the custom basket’s net assets.</p> <p>Generally, a fund does not calculate the net assets of a custom basket. As a result, the updates to the FAQs provide two methods for calculating the required percentage value information: (1) a fund could disclose the value of the component compared to the value of the derivative on the custom basket, or (2) a fund could disclose the value of the component relative to the fund’s net assets, provided the heading to the column clearly shows what this information represents.</p>

Form N-CEN

Issue	New SEC Guidance
Form N-CEN Filing Tool	To allow registrants to report data manually, the SEC will provide access to a web-based form available on EDGAR. To access this online form, select the “File N-CEN” link at https://www.edgarfiling.sec.gov and input the appropriate responses to each question.
Filing Obligations for Terminated Registrants	The Staff clarified that generally a registrant must still file reports on Form N-CEN when a registrant has filed or intends to file an application to deregister but is not yet deregistered. Conversely, registrants that do not yet have shareholders and management companies that have elected to be a business development company (BDC) are not required to file reports on Form N-CEN.
Filing Obligations for Terminated Series of a Multi-Series Registrant (Items B.6.a.i, B.6.a.ii, C.2.a and C.2.c)	<p>The Staff clarified Form N-CEN filers’ requirements for a multi-series registrant where a series was liquidated, merged or otherwise terminated during the reporting period.</p> <p>These particular registrants do not need to report information requested by Part C of Form N-CEN as to those terminated series. Furthermore, instead of including terminated series in Item B.6.a.i (which requests the number of series of the registrant), these registrants would identify any terminated series during the relevant period in response to Item B.6.a.ii. In addition, information about the series name, Series ID and date of termination should be provided in Item B.6.a.ii, even where substantially all of the assets of the series have been transferred to another series of the same or different registrant. Registrants are also not required to include information about terminated classes in Item C.2.a (which requests the number of authorized classes of shares). Any terminated classes during the relevant period would be recorded in Item C.2.c.</p>

Practice Points and Tips

Service providers should consistently review their capabilities and evaluate changes needed to ensure compliance with the newly added information in the FAQs regarding Forms N-PORT and N-CEN, as well as the amendments to Regulation S-X. In addition, fund directors should be notified of regulatory updates and how they will influence funds and their reporting requirements. Both service providers and fund directors may utilize the FAQs to interpret these new forms and amendments.

For more information on the application of these rules or investment company regulatory compliance, please feel free to call or e-mail your contact within the Investment Management Group.

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