The Investment Lawyer

Covering Legal and Regulatory Issues of Asset Management

VOL. 24, NO. 7 • JULY 2017

Interpretive and Other Challenges to Liquidity Classification under the SEC's New Liquidity Risk Management Rule

By Jeffrey S. Puretz, Brenden P. Carroll, Aaron D. Withrow, and Nicholas DiLorenzo

Many fund complexes have begun to plan for the numerous liquidity management compliance and reporting requirements they will face under new Rule 22e-4 under the Investment Company Act of 1940 (1940 Act).[1] Although well in advance of the late 2018 and mid-2019 compliance deadlines,[2] an early start on these preparations is advisable in light of the many interpretive and other challenges under the new rule.

Liquidity Risk Management Programs under Rule 22e-4

As adopted by the Securities and Exchange Commission (SEC or Commission), Rule 22e-4 requires registered open-end management investment companies, including exchange-traded funds (ETFs) and exchange-traded managed funds,[3] but excluding money market funds, to establish written liquidity risk management programs that provide for the: (i) assessment, management and periodic review of a fund's liquidity risk; (ii) classification of a fund's portfolio investments into one of four liquidity categories and at least monthly review of these classifications; and (iii) determination and periodic review of a fund's highly liquid investment minimum (HLIM) and adoption and implementation of procedures for responding to circumstances where the fund's highly liquid investments fall below the HLIM. Rule 22e-4 also subjects all funds and In-Kind ETFs to a 15 percent limitation on illiquid investments. Additionally, the SEC adopted a number of related reporting requirements.[4]

These requirements "are designed to provide investors with increased protection regarding how liquidity in their open-end funds is managed, thereby reducing the risk that funds will be unable to meet redemption or other legal obligations, and mitigating dilution of the interests of fund shareholders."[5] Similarly, the Commission discusses the impact of failing to properly manage portfolio liquidity on shareholders and noted that a "fund that chooses to sell its most liquid assets to meet fund redemptions may minimize the effect of the redemptions on short-term fund performance for redeeming and remaining shareholders, but may leave remaining shareholders in a potentially less liquid and riskier fund until the fund adjusts the portfolio."[6] Thus, under Rule 22e-4, funds must address the way in which a fund's assets are sold if needed to meet shareholder redemption requests to seek to avoid potential significant dilution in value or a significant change in risk profile for remaining fund investors' interests.[7]

Issues and Challenges in Liquidity Classifications

Each element of the new rule, together with the SEC's guidance as set forth in the adopting

Copyright © 2017 by CCH Incorporated. All Rights Reserved.

release, contains a number of interpretive issues and compliance challenges. In this article, we examine a sampling of issues and challenges related to the requirement to classify a fund's portfolio investments into one of four liquidity categories by:

- Interpreting the term "significant" as it relates to the value impact standard;
- Determining reasonably expected trade sizes for purposes of the market depth analysis;
- Weighing the pros and cons of liquidity classifications by asset class;
- Classifying fund-of-funds' investments in shares of underlying funds; and
- Managing the frequency of liquidity classification reviews in light of other requirements under Rule 22e-4.

The Significance of "Significant"

Rule 22e-4 requires a fund to classify each of its portfolio investments (including derivatives transactions) into one of four liquidity categories—"highly liquid investments," "moderately liquid investments," "less liquid investments," and "illiquid investments." The definition of each such category is based on the number of days within which the fund can reasonably expect to convert the investment to cash (or, for the "less liquid" and "illiquid" categories, sold or disposed of), without "*significantly* changing the market value"[8] of the investment (the Value Impact Standard). Despite its central role in the liquidity classification process, the SEC declined to define the term "significantly changing." As a result, funds should carefully consider, taking into consideration SEC guidance in the adopting release and other contexts, the most appropriate basis for defining significance under the Value Impact Standard.

SEC guidance in the adopting release and in other contexts may be informative when defining significance under the Value Impact Standard. The adopting release clarified that the Value Impact Standard need not reflect general market movements or estimates of market impact to a precise degree, nor is the Value Impact Standard intended to capture price movements due to market events or "very small movements in price."[9] Instead, the Value Impact Standard should reflect an emphasis on the risk of significant dilution of a fund's remaining shareholders.[10]

Consistent with past practice in other contexts, the SEC declined to define the term "significant." However, the SEC drew a meaningful distinction by affirmatively rejecting a materiality threshold[11] and indicating that a "significant" change represented a *higher* threshold than a "material" change.[12] Absent further guidance, the SEC's decision not to define the term "significant" under the Value Impact Standard will allow funds to determine the standard based on the portfolio investments actually held. That determination, however, must be reasonable.

Among other potential standards, funds may wish to consider whether an impact-based or trading-based threshold is an appropriate basis for determining significance under the Value Impact Standard. Under an impact-based approach, a fund would define one or more quantitative thresholds above which an anticipated change in market value could be deemed significant.[13]

Alternatively, funds may define significance under the Value Impact Standard by reference to trading-based criteria. Similar to an impact-based approach, a fund could select one or more quantitative thresholds indicating a preliminary assumption of significance. However, under the trading-based approach, the threshold would be based on anticipated trading activity as a percentage of average daily trading volume rather than the actual impact of trading. For example, a fund may conclude that trading greater than a pre-determined percentage of the average daily trading volume of an asset (or other metric) is presumed to have a significant impact on the market value of the asset.

The particular approach for assessing significance could vary from fund to fund and the specific quantitative threshold or other criteria for determining significance could differ by asset class. For certain asset classes, it may be more appropriate to assess

Copyright © 2017 by CCH Incorporated. All Rights Reserved.

significance based on a range rather than a specific percentage threshold. To the extent possible, funds should consider implementing rules-based processes to assess significance under the Value Impact Standard. Funds that utilize quantitative thresholds as preliminary indicators of significance should also ensure that the process provides appropriate discretion and latitude to consider the total mix of available inputs. Ultimately, irrespective of the particular approach selected, a fund should seek to ensure that the material aspects of its process are documented in written compliance policies and procedures and that its process is consistently applied and periodically reassessed over time. Funds should also consider whether the process for assessing significance appropriately addresses applicable SEC policy concerns and guidance.

Into the Depths of the "Market Depth" Analysis: Reasonably Expected Trade Size

Under the rule, funds must determine whether trading different portions of a position in a particular portfolio investment, in sizes that the fund would reasonably anticipate trading, is reasonably expected to significantly affect the liquidity of the investment. If such trading is reasonably expected to significantly affect the investment's liquidity characteristics, a fund must take this into consideration in classifying the investment.[14] The rule does not permit liquidity classifications based on the assumption that a fund would trade a single trading lot, nor does the rule require a fund to assume that it would trade the full position.[15]

Funds will need to determine the size of a holding that a fund reasonably anticipates trading. The Commission indicated that this may be determined by considering the liquidity risk factors enumerated in the rule, including short-term and long-term cash flow projections, as well as other factors, including a fund's size.[16] A fund will also need to consider whether it reasonably anticipates trading a *pro rata* portion of each portfolio investment (that is, a "top down" approach), or a pre-determined percentage of one or more particular portfolio investments (that is, a "bottom up" approach). In the adopting release, the Commission stated that "it may be appropriate for a fund with a highly liquid portfolio, with very stable and minimal cash flow projections and significant cash holdings and operating in very stable market conditions, to adopt policies and procedures that consider whether trading relatively small fractions of each of the fund's portfolio holdings would result in significant liquidity impacts."[17] Irrespective of the approach taken, funds must consider market depth on a fund by fund basis, meaning that the liquidity classification of a particular portfolio investment may vary from fund to fund.

The Commission also stated that if a "fund determined, after conducting the required market depth analysis, that a downward adjustment in the liquidity classification of a particular investment is appropriate, the new liquidity classification that the fund assigns to this investment *would apply to the entirety of the fund's position in that investment (not, as proposed, to portions of that position)*."[18] The SEC acknowledged that, because of the requirement to consider market depth, "some funds may determine that a greater percentage of holdings are illiquid."[19] Funds should be mindful that a downward adjustment in the liquidity classification of a particular investment may cause a fund to exceed the 15 percent limitation on illiquid investments, which would impose certain reporting and board reporting obligations.[20] Funds may, therefore, wish to establish an early warning system where portfolio managers and the program administrator are alerted to holdings of illiquid investments below the 15 percent limitation.

Asset Class-Based Liquidity Classifications: Worth the Trouble?

Under the rule, funds are permitted to classify the liquidity of portfolio investments according to asset class.[21] However, funds must separately classify any investment if the fund or its adviser, after reasonable inquiry, has information about any market, trading,

Copyright © 2017 by CCH Incorporated. All Rights Reserved.

or investment-specific considerations that are reasonably expected to significantly affect the liquidity characteristics of the investment as compared to the fund's other portfolio holdings within the same asset class. According to the adopting release, examples of such information include knowledge that: (i) a large-capitalization equity security was affected by adverse events impacting the security's issuer;[22] and (ii) certain high-quality corporate bonds' bid-ask spreads were significantly wider or more volatile than those of their peers. Additionally, the adopting release stated that certain asset classes are expected to have a wide range of liquidity characteristics and that, therefore, a fund cannot reasonably determine to classify all investments within that asset class in a uniform manner.[23]

Procedures for classifying investments' liquidity by asset class should also include "exception" processes for updating default classifications based on market, trading, and investment-specific considerations. Although the rule does not specify how a fund should identify investments that should be classified individually, the Commission noted that exception processes should specify the sources of inputs (for example, inputs from portfolio management, risk management, and/or trading) and particular variables (for example, relatively wider/narrower/more volatile bid-ask spreads compared with other assets in the asset class) that could impact classification.[24]

Funds must determine whether to use resources to build the policies, procedures, and systems to: (i) classify an investment according to a default classification; and (ii) monitor that default classification based on a variety of inputs from a variety of sources. Any default classification should be documented and based on market, trading, and investment-specific considerations, and program administrators should carefully consider whether investments within the same default classification share the same general liquidity characteristics. Alternatively, rather than engage in a process of analyzing whether an investment warrants an exception from a default classification to its asset class, funds may prefer to classify every investment on its own individual liquidity characteristics.

Through the Looking Glass: ETFs, Funds-of-Funds and Look-Through for Liquidity Classifications

Rule 22e-4 requires that funds take into consideration relevant market, trading, and investment-specific considerations when classifying the liquidity of funds' portfolio investments. As noted above, these considerations may take into account any of several "useful and relevant" Liquidity Classification Factors detailed in the adopting release, including the exchange-traded nature of an asset class or investment.[25]

The Commission acknowledged that the exchange-traded nature of an ETF in which a fund invests is relevant to the fund's consideration of that investment's liquidity classification, but the Commission indicated that this fact is not determinative for purposes of classifying an investment in an ETF. Indeed, because the "liquidity of an ETF … is limited by the liquidity of the market for the ETF's underlying securities," the Commission's view is that "shares of an ETF whose underlying securities are relatively less liquid may not be able to be counted on to provide liquidity to a fund investing in those shares during times of stress." Moreover, the Commission believes that ETF shares may trade "continuously at a premium or discount to the value of the ETF's underlying portfolio securities," if liquidity concerns regarding the ETF's underlying securities resulted in authorized participants' inability or unwillingness to transact in those underlying securities. As a result, the Commission "encourage[s] funds to *assess the liquidity characteristics of an ETF's underlying securities*, as well as the characteristics of the ETF shares themselves, in classifying the liquidity of ETF shares."[26]

The Commission did not indicate in the adopting release whether this same principle would apply in the fund-of-funds context. When classifying its

Copyright © 2017 by CCH Incorporated. All Rights Reserved.

investments in shares of funds other than ETFs, should a fund-of-funds "assess the liquidity characteristics of [the underlying fund's] underlying securities"? Certainly, there are distinctions from the rationale provided by the Commission in the ETF context. For instance, shares of funds other than ETFs would be valued at their net asset value per share, so the Commission's concerns over trading "at a premium or discount to the value of the [fund's] underlying portfolio securities" would not be present. Nevertheless, with respect to classifying the liquidity of a fund-of-funds investment in shares of a non-ETF underlying fund, Commission guidance in the adopting release did not clarify whether the fund-of-funds may rely on the underlying fund's statutory obligation to pay redemption proceeds within seven calendar days, or, alternatively, whether the liquidity of the underlying fund's underlying securities should be considered.[27]

Further, where an underlying fund is subject to the Form N-1A amendments adopted concurrently with Rule 22e-4,[28] may (or to what extent may) the fund-of-funds rely on the underlying fund's disclosures regarding expected time for payment of redemption proceeds? Is the fund-of-funds expected or "encouraged" to undertake an independent assessment of the liquidity characteristics of the underlying fund's underlying securities regardless of this disclosure by the underlying fund? And, if a fund-of-funds is expected or "encouraged" to undertake such an independent assessment, on what should such an assessment be based? After all, for non-ETF underlying funds that are subject to the Commission's Form N-PORT reporting requirements, only aggregate, portfolio-level information will be publicly available, and it will only be available on a quarterly basis after a 60-day delay.[29]

In the absence of further guidance, funds that invest in shares of non-ETF underlying funds will need to consider and come to a reasoned conclusion regarding the treatment of such investments for liquidity classification purposes.

How Much Is Enough? Monthly Liquidity Classification Reviews in Light of Other Rule 22e-4 Requirements

At least monthly reviews of a fund's liquidity classifications are required in connection with Form N-PORT reporting, and more frequent reviews are required "if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of" the fund's classifications.[30] At the same time, new Form N-LIQUID requires reporting "within one business day of the occurrence" of (i) a breach of the 15 percent limit on illiquid investments and (ii) a breach of the HLIM that continues for more than seven consecutive calendar days.[31] Moreover, Rule 22e-4(b)(1)(iv) prohibits acquisition of an illiquid investment if, immediately after the acquisition, the fund or In-Kind ETF would have invested more than 15 percent of its net assets in illiquid investments that are assets. Because liquidity classifications underpin the determinations necessary for these reporting and compliance requirements, funds must manage the frequency of their liquidity classification reviews in light of these separate requirements under Rule 22e-4.

In the adopting release, the Commission noted the distinction between the liquidity classification review requirement under Rule 22e-4, as adopted, and the proposed requirement to review liquidity classifications on an "ongoing" basis.[32] In discussing liquidity classification reviews in light of the HLIM and 15 percent limitation on illiquid investments, the Commission stated that "in order to determine whether its holdings are consistent with the [HLIM and 15 percent limitation on illiquid investments], a fund would have to determine whether its initial classification determinations have changed based on market conditions or other developments."[33] On this point, the Commission reiterated the requirement under Rule 22e-4(b)(1)(ii) to review liquidity classifications more frequently than monthly if changes in relevant market, trading, and investment-specific considerations are reasonably expected to materially affect one or more of the fund's investment classifications.[34]

Copyright © 2017 by CCH Incorporated. All Rights Reserved.

The Commission's reference to a fund's "initial classification determinations" is consistent with the practice of, in addition to regular monthly liquidity classification reviews, classifying each new portfolio investment upon acquisition. This practice would appear necessary in light of the general HLIM requirements and 15 percent limitation on illiquid investments. However, the Commission's admonishment to "determine whether… initial classification determinations have changed based on market conditions or other developments," together with the requirement to report certain liquidity events "within one business day of the occurrence," indicates a necessity for *ongoing monitoring* for changes in relevant market, trading, and investment-specific considerations that may reasonably be expected to materially affect fund investment classifications. Thus, while a fund is not expected "to constantly reassess all of its portfolio investments' liquidity,"[35] a constant assessment of relevant market, trading, and investment-specific considerations for events that may trigger such a reassessment of liquidity classifications appears to be necessary.

Conclusion

Rule 22e-4 and related reporting requirements undoubtedly present a number of interpretive issues and compliance challenges. This article has considered only a handful of the difficult questions that have arisen as funds begin to grapple with the requirement to classify a fund's portfolio investments into one of four liquidity categories. While further regulatory guidance may help to clarify these and other questions under the new rule, and industry best practices are likely to develop, fund complexes would be wise to consider and seek to address the particular issues they face well ahead of the 2018 and 2019 compliance deadlines.

Mr. Puretz is a partner in the Washington, DC office, **Mr. Carroll** and **Mr. Withrow** are associates in the Washington, DC office, and **Mr. DiLorenzo** is an associate in the Boston office, of Dechert LLP. Each is a member of the firm's Financial Services Group.

NOTES

1 *See Investment Company Liquidity Risk Management Programs*, 81 Fed. Reg. 82,142 (Nov. 18, 2016) (the adopting release).

2 The compliance date for fund complexes with net assets of $1 billion or more as of the end of the most recent fiscal year is December 1, 2018. For smaller fund complexes (with net assets below $1 billion as of the end of the most recent fiscal year), the compliance date is June 1, 2019. "Fund complex" means funds in the same "group of related investment companies." *See* 1940 Act Rule 0-10(a)(1).

3 References to ETFs include exchange-traded managed funds. Under Rule 22e-4, the term "fund" does not include so-called "In-Kind ETFs." Rule 22e-4 defines "In-Kind ETF" to mean an ETF that meets redemptions through in-kind transfers of securities, positions, and assets other than a *de minimis* amount of cash and that publishes its portfolio holdings daily. *See* Rule 22e-4(a)(5), (9).

4 For example, position-level and aggregate liquidity classification data, the HLIM and information about breaches of the HLIM, and data on certain investments segregated to cover (or pledged to satisfy margin requirements in connection with) certain derivatives transactions will be reported on Form N-PORT. Significant events related to fund liquidity will be reported on new Form N-LIQUID.

5 Adopting Release at 82,144.

6 *See* Adopting Release at 82,150.

7 *See* Adopting Release at 82,155 ("We anticipate that the new program requirement will result in investor protection benefits, as improved liquidity risk management could decrease the chance that a fund could meet its redemption obligations only with significant dilution of remaining investors' interests or changes to the fund's risk profile.") and n.164 ("When determining whether a fund's liquidity risk will cause significant dilution for purposes of this definition, a fund should consider the impact of liquidity risk on the total net assets of the

Copyright © 2017 by CCH Incorporated. All Rights Reserved.

fund and the adverse consequences such dilution will have on all the fund's remaining shareholders.").

8 In this context, the term "market value" "includes the value of investments that are fair valued." *See* Adopting Release at n.325.

9 *See* Adopting Release at 82,172.

10 *See* Adopting Release at 82,173 ("[W]e believe that the final value impact standard … appropriately balances our desire to capture the risk of dilution in cases of inadequate liquidity, while not also requiring funds to account for every possible value movement.").

11 Under the proposed rule, the liquidity classifications would have involved consideration of whether the asset was convertible to cash "at a price that does not *materially* affect the value of the asset immediately prior to sale." *See* proposed Rule 22e-4(b)(2)(i) (emphasis added); *see also Open-End Fund Liquidity Risk Management Programs; Swing Pricing; Re-Opening of Comment Period for Investment Company Reporting Modernization Release*, 80 Fed. Reg. 62,274 (Oct. 15, 2015) (Proposing Release).

12 In the adopting release, the Commission noted that it had "changed the [Value Impact Standard] to capture only value impacts that *significantly change* the investment's market value, rather than the proposed standard that focused on *materially affecting* the value of the asset immediately prior to sale." The SEC then stated its belief "that funds will be less likely to interpret *significant changes* in market value as capturing very small movements in price, and thus this change should address commenters' concern that the proposal would create a value impact standard that is impractical to apply because any sale of an investment could affect its market value to some degree." The Commission also stated "that a fund's classification policies and procedures should address what it would consider to be a significant change in market value." *See* Adopting Release at 82,172-73 (all emphasis in original).

13 In the financial reporting context, the SEC Staff indicated that it would not object to the use of a five-percent threshold as a preliminary assumption of materiality. *See* SEC Staff Accounting Bulletin No. 99 – *Materiality* (Aug. 12, 1999) (pub. avail. at *https://www.sec.gov/interps/account/sab99.htm*). The Staff emphasized that the preliminary assumption of materiality should be one of multiple inputs surrounding a materiality determination and that the ultimate materiality determination must be made based on an assessment of "all surrounding circumstances," including the "nature of the item and the circumstances in which the judgment has to be made." *Id.*

SEC guidance in other contexts may suggest that a quantitative threshold in excess of five percent could also be an appropriate indicator of "significance." *See, e.g.*, 17 C.F.R. Part 210.1-02 (defining a "significant subsidiary," for purposes of Regulation S-X at a ten-percent or higher ownership threshold); *see also In the Matter of Davis Selected Advisers-NY, Inc.*, Inv. Advisers Act Rel. No. 2055 (Sept. 4, 2002) (pub. avail at *https://www.sec.gov/litigation/admin/ia-2055.htm*) (stating that a strategy to invest in initial public offerings (IPO) had a "significant" impact on performance based on the fact that the IPO strategy contributed 25 percent in one year and 47 percent in the next year to the fund's total return).

14 *See* Rule 22e-4(b)(1)(ii)(B).

15 *See* Adopting Release at 82,181 ("[T]his requirement would have a fund consider portions of a portfolio position that are larger than a single trading lot, but not necessarily the position's full size, in assessing its portfolio investments' liquidity.").

16 *See* Adopting Release at 82,182 ("Depending on the liquidity risk factors that a fund must consider … as well as other factors including the fund's size, a fund could reasonably anticipate selling various portions of its position in a particular portfolio investment, or various dollar amounts or block sizes of a particular portfolio investment.").

17 The Commission noted, however, that it "would generally consider it appropriate for a fund whose holdings are relatively illiquid and/or fairly concentrated, with unpredictable cash flow projections or deteriorating market conditions in the markets in which it invests, to consider whether trading larger portions

Copyright © 2017 by CCH Incorporated. All Rights Reserved.

of its portfolio holdings would result in significant liquidity impacts." *See* Adopting Release at 82,182.

18 *See* Adopting Release at 82,182 (emphasis added).

19 *See* Adopting Release at 82,178.

20 Exceeding the 15 percent limit on illiquid investments will trigger the following reporting and board reporting obligations: (i) the fund must confidentially report to the Commission within one business day on Form N-LIQUID that the fund's portfolio exceeds the 15 percent limit; and (ii) the program administrator must report such occurrence to the fund's board within one business day, explaining the extent and causes of the occurrence, as well as providing a proposed plan to bring illiquid investments to or below the 15 percent limit "within a reasonable amount of time." Furthermore, if, after 30 days (and each 30-day period thereafter), the percentage of a fund's net assets in illiquid investments continues to exceed the 15 percent limit, the fund's board (including a majority of independent board members) is required to assess whether the plan to bring illiquid investments to or below the 15 percent limit continues to be in the fund's best interest.

21 According to the adopting release, procedures for classifying investments' liquidity by asset class "should incorporate sufficient detail to meaningfully distinguish between asset classes and sub-classes." In this regard, the adopting release noted that: (i) fixed income securities could be distinguished based on issuer type, the market(s) in which the issuer is based, seniority, age, and credit quality; (ii) structured products could be distinguished based on tranche seniority and credit quality; and (iii) equity securities could be distinguished based on the market(s) in which the security's issuer is based, market capitalization and whether the security is common or preferred. According to the SEC, general categories, such as "equities" or "fixed income," are not appropriate. *See* Adopting Release at 82,180-81.

22 The adopting release did not provide clarity or guidance on the types of "adverse events" that would require a fund to separately classify any equity investment. Given the number of events that could potentially be deemed to be "adverse," funds may wish to consider quantitative data, such as a material price decrease relative to a benchmark.

23 The adopting release cited to asset classes "encompassing some bespoke complex derivatives or complex structured securities" as examples of asset classes that have "a [wide] range of liquidity characteristics that each position would need to be classified individually." *See* Adopting Release at 82,180.

24 Additionally, the Commission noted in the adopting release that relevant market, trading and investment-specific considerations may take into account any of several "useful and relevant" factors detailed in the adopting release (such factors, the Liquidity Classification Factors). *See* Adopting Release at 82,186-91. The Commission noted that the guidance in the Adopting Release on the Liquidity Classification Factors "could assist funds in identifying . . . those investments that may demonstrate liquidity characteristics that are distinct from the fund's other portfolio holdings within that same asset class." Adopting Release at 82,187.

25 *See* Adopting Release at 82,186-87. Notably, Rule 22e-4 as proposed would have required consideration of the Liquidity Classification Factors as part of the liquidity classification process. *See* proposed Rule 22e-4(b)(2)(ii). The SEC determined not to codify the Liquidity Classification Factors in the rule as adopted, but "continue[s] to believe that the proposed classification factors could be useful and relevant as aspects of the general market, trading, and investment-specific considerations that a fund must take into account." *See* Adopting Release at 82,186.

26 *See* Adopting Release at 82,187-88 (emphasis added).

27 For unregistered underlying funds, such statutory obligations do not apply. The discussion in this article is limited to underlying funds that are "funds" under Rule 22e-4 (*i.e.*, registered open-end management investment companies other than money market funds and ETFs). *See* Rule 22e-4(a)(5).

28 Among other things, the new Form N-1A requirements would require a fund to disclose "[t]he number of days following receipt of shareholder redemption requests in which the fund typically expects to pay

Copyright © 2017 by CCH Incorporated. All Rights Reserved.

out redemption proceeds to redeeming shareholders." *See* Form N-1A Item 11(c)(7); Adopting Release at 82,267.

[29] *See, e.g.*, Adopting Release at n.121 and accompanying text.

[30] *See* Rule 22e-4(b)(1)(ii).

[31] *See* Form N-LIQUID General Instruction A.(2) and Parts B and D; *see also* Adopting Release at 82,144. Rule 22e-4 also requires certain fund board reporting in such circumstances, as discussed above.

[32] *See* Adopting Release at 82,193 ("We believe that the review requirement we are adopting, as opposed to the proposed ongoing review requirement, permits funds to tailor their review of liquidity classifications in light of the liquidity character of a fund's portfolio investments."); *see also* proposed Rule 22e-4(b)(2)(i) and Proposing Release at 62,302-03.

[33] *See* Adopting Release at 82,192.

[34] *Id.*

[35] *Id.* at 82,193.

Copyright © 2017 CCH Incorporated. All Rights Reserved.
Reprinted from *The Investment Lawyer*, July 2017, Volume 24, Number 7, pages 12–19,
with permission from Wolters Kluwer, New York, NY,
1-800-638-8437, www.wklawbusiness.com

Copyright © 2017 by CCH Incorporated. All Rights Reserved.