

How The SEC's New Filing Rule Addresses Data Security

By **Stephen Cohen, Megan Johnson and Gary Brooks** (March 29, 2019, 3:24 PM EDT)

To address data sensitivity concerns, the U.S. Securities and Exchange Commission on Feb. 27, 2019, issued an interim final rule that requires certain registered investment companies to file three monthly reports on Form N-PORT with the SEC no later than 60 days after the end of a fund's fiscal quarter.[1] This requirement replaces a previously established requirement to file reports on Form N-PORT with the SEC on a monthly basis no later than 30 days after the end of each month.

The new interim rule also requires each fund that is required to file reports on Form N-PORT to maintain in its records the information that is required to be included on such form no later than 30 days after the end of each month. In addition, the interim rule amends Form N-LIQUID to provide funds with the option to include a note for purposes of explaining any other response to an item in that form.

The interim rule does not change the public availability of the data reported on Form N-PORT for the first and second months of each fiscal quarter (i.e., these Form N-PORT filings will remain nonpublic). As a result of the interim rule, data reported on Form N-PORT (with certain exceptions, as discussed below) for the third month of each fiscal quarter will become publicly available immediately upon filing. In connection with the adoption of the interim rule, the SEC plans to make certain changes to its technical filing procedures to help safeguard against the public disclosure of nonpublic information.

As discussed in the SEC's press release announcing the adoption of the interim rule, it is the result of the SEC's periodic assessment of whether alternatives exist that would allow the SEC to fulfill its mission while reducing the sensitivity of data that it collects.[2]

Background

In October 2016, the SEC adopted Form N-PORT as part of a series of new rules and forms, as well as amendments to certain rules and forms, to modernize the reporting of information by funds and to improve the information that the SEC receives from funds.[3] These reporting modernization rules require funds to electronically file portfolio-wide and position-level information on a monthly basis with the SEC no later than 30 days after each month's end.



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The adopting release for the reporting modernization rules provided that the original compliance date for Form N-PORT data gathering and filing would be June 1, 2018, for funds that are part of a complex with \$1 billion or more in assets (a larger fund complex); and June 1, 2019, for all other funds (a smaller fund complex).

In December 2017, the SEC issued a temporary final rule that provided a nine-month delay to the dates by which funds were required to file new Form N-PORT on the EDGAR system.[4] Under this temporary rule, those funds part of a larger fund complex subject to the original June 1, 2018, compliance date were required to gather and maintain all of the data required by Form N-PORT as of the original reporting date, and such information is subject to examination by the SEC staff.

Beginning in July 2018, larger fund complexes had started gathering and maintaining information required to be reported on Form N-PORT, and these fund complexes were required to begin to file this information on a monthly basis commencing in April 2019. The new interim rule impacts funds' filing obligations as we approach the initial filing date for larger fund complexes.

Implications of the Interim Rule

While most of the compliance obligations under the reporting modernization rules and the temporary rule will remain the same, the adoption of the interim rule impacts the dates and manner in which fund complexes will need to make their initial and ongoing EDGAR filings of information reported on Form N-PORT.

The table below provides an overview of the interim rule's compliance and filing requirements in comparison to the original compliance and filing requirements under the reporting modernization rules and the temporary rule.

	Reporting Modernization Rules and Temporary Rule	Interim Rule
Compliance Date for Form N-PORT and Requirement to Maintain Form N-PORT Data	June 1, 2018, for larger fund complexes; March 1, 2020, for smaller fund complexes.	No change.
Initial EDGAR Filing Deadline Date for Form N-PORT	April 30, 2019 (relating to March 31, 2019, data), for larger fund complexes; April 30, 2020 (relating to March 31, 2020, data), for smaller fund complexes.	For funds that are part of a larger fund complex and have a fiscal quarter end on March 31: May 30, 2019 (relating to March 31, 2019 data).
		For funds that are part of a smaller fund complex and have a fiscal quarter end on March 31: June 1, 2020[5] (relating to Jan. 31, 2020, Feb. 29, 2020, and March 31, 2020, data).

		<p>For funds that are part of a larger fund complex and have a fiscal quarter end on April 30: July 1, 2019^[6] (relating to March 31, 2019, and April 30, 2019, data)</p>
		<p>For funds that are part of a smaller fund complex and have a fiscal quarter end on April 30: June 29, 2020 (relating to Feb. 29, 2020, March 31, 2020, and April 30, 2020, data).</p>
		<p>For funds that are part of a larger fund complex and have a fiscal quarter end on May 31: July 30, 2019 (relating to March 31, 2019, April 30, 2019, and May 31, 2019, data).</p>
		<p>For funds that are part of a smaller fund complex and have a fiscal quarter end on May 31: July 30, 2020 (relating to March 31, 2020, April 30, 2020, and May 31, 2020, data).</p>
Ongoing EDGAR Filing Dates for Form N-PORT	For each calendar month, 30 days after the end of the month (relating to month-end data for that month).	For each fiscal quarter, 60 days after the end of the fiscal quarter (relating to month-end data for each of the three months of the fiscal quarter).
Public Availability of Data Reported on Form N-PORT	There is a six-month, nonpublic phase-in period during which information filed on Form N-PORT will not be disclosed publicly. ^[7]	No change.
	Information reported on Form N-PORT for first and second months of each fund's fiscal quarter is nonpublic information.	No change.
	Information reported on Form N-PORT for the third month of each fund's fiscal quarter is filed nonpublicly 30 days after the end of the fiscal quarter, and will be made publicly available 60 days after the end of the fund's fiscal quarter (with the exception of the items identified in General Instruction F of Form N-PORT).	Information reported on Form N-PORT for the third month of each fund's fiscal quarter must be filed no later than 60 days after the end of the fiscal quarter, and will be made publicly available immediately (with the exception of the items identified in General Instruction F of Form N-PORT). If a fund files early (i.e., prior to the 60-day deadline), the quarter-end information will be made public at the time of filing.
Recordkeeping Obligations	Under the temporary rule, larger fund complexes have been required since July 30, 2018, to gather and maintain the information required to be reported on Form N-PORT until they begin making	All fund complexes are required to gather the information required to be reported on Form N-PORT, no later than 30 days after the end of each month. This obligation began on July 30, 2018, for larger fund complexes (relating to

	monthly filings on EDGAR; smaller fund complexes were not subject to a similar obligation due to the alignment of the Form N-PORT compliance date and initial filing date for these funds.	June 30, 2018, data), and will begin on April 30, 2020, for smaller fund complexes (relating to March 31, 2020, data).
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Filing Procedures and Modification of Filing Schema for Form N-PORT to Address Public/Nonpublic Distinction

In connection with the adoption of the interim rule, the SEC is making certain changes to its technical filing procedures to help ensure that filings intended to be nonpublic are not made public. The SEC’s EDGAR filing manual contains detailed guidelines relating to Form N-PORT filings, including instructions to make a quarter-end filing through two separate reports: one report on NPORT-NP (a nonpublic form designation for the first two months of the fund’s fiscal quarter) and one report on NPORT-P (a public form designation for the third month of the fund’s fiscal quarter).

The SEC stated in the interim rule release that it is modifying the filing schema for Form N-PORT to require funds to affirm whether the data in the filing is nonpublic (for the first and second months) or public (for the third month). If a fund affirms in a filing that the data is nonpublic, but attempts to file the report on Form NPORT-P, such a filing will not be accepted by the EDGAR system. This two-step feature is intended to safeguard against the potential for inadvertent public disclosure of nonpublic information.

Form N-LIQUID Amendment

Unrelated to the changes described above, the interim rule also amended a form adopted in connection with Rule 22e-4 under the 1940 Act — the SEC’s “Liquidity Risk Management Program” rule applicable to registered open-end investment companies. Under that rule, which took effect, in part, on Dec. 1, 2018, open-end investment companies are required to file reports with the SEC on new Form N-LIQUID when certain liquidity-related events occur. These reports will be nonpublic and will be required within one business day of the occurrence of an event specified in the form.

The Interim Rule amended Form N-LIQUID to provide for a voluntary explanatory notes section that permits, but does not require, an open-end investment company to provide any explanations relating to the filing that may be helpful in understanding the information reported in response to any other item of Form N-LIQUID. This form item is substantially similar to a corresponding instruction in Form N-PORT intended to provide funds with the ability to communicate additional information or context that could help the SEC understand the filing.

Conclusion

The interim rule represents a logical step by the SEC to attempt to alleviate some industry concerns about the sensitivity of the data required to be transmitted by funds to the SEC on Form N-PORT. While the interim rule does not change the content funds must report or the timing of when information is publicly disclosed, it does represent additional efforts by the SEC to protect funds’ sensitive data.

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[1] Amendments to the Timing Requirements for Filing Reports on Form N-PORT, Release No. IC-33384 (Feb. 27, 2019); SEC Modifies Timing for Filing Non-Public Form N-PORT Data to Align with Its Approach to Data Management and Cybersecurity (Feb. 27, 2019).

[2] In the press release, SEC chairman Jay Clayton states that “this revised approach to the receipt of new, non-public monthly Form N-PORT data enables the Commission to receive and analyze this new data while meaningfully reducing the sensitivity of that data at the time it is transmitted to the Commission.”

[3] Investment Company Reporting Modernization, Investment Company Act Release 32314 (Oct. 13, 2016). For further information, please refer to Dechert OnPoint, SEC Adopts Rules and Forms to Modernize Reporting Requirements for Registered Investment Companies.

[4] Investment Company Reporting Modernization, Release No. IC-32936 (Dec. 8, 2017); SEC Modifies Approach to Form N-PORT Filing Requirements (Dec. 8, 2017). For further information, please refer to Dechert OnPoint, SEC Announces Delay in Form N-PORT Filing Requirements.

[5] 60 days after March 31, 2020, is May 30, 2020, which falls on a Saturday. General Instruction A to Form N-PORT provides that “[i]f the due date falls on a weekend or holiday, the filing deadline will be the next business day.”

[6] See *supra* note 5. 60 days after April 30, 2019 is June 29, 2019, which falls on a Saturday.

[7] Portfolio information attached as exhibits to Form N-PORT for the first and third quarters of a fund's fiscal year will still be made public during this six-month period.