

# U.S. SEC Approves Proposal to Modernize Investment Company Reporting Regime

A legal update from Dechert's Financial Services Group

June 2015

# U.S. SEC Approves Proposal to Modernize Investment Company Reporting Regime

The U.S. Securities and Exchange Commission (SEC or Commission) unanimously approved a proposal (Proposal) to modernize the reporting of information provided by registered investment companies (funds).<sup>1</sup> Guided by the recent implementation of enhanced data reporting requirements for money market funds that make filings on Form N-MFP and for private funds that make filings on Form PF, the Proposal is designed to improve the quality and type of information that all funds provide to the SEC and investors. Among other things, certain new reporting requirements would be provided in a “structured data format,” which would allow the SEC to efficiently analyze the data to respond to market, fund-specific or adviser-specific events. As SEC Chair Mary Jo White stated at the open meeting at which the Proposals were approved, the Proposal would allow the SEC to have “more and better information to monitor risks in the asset management industry.”

The Proposal has four key components:

- Adoption of Form N-PORT, for reporting portfolio-wide and position-level holdings information, and the rescission of Form N-Q;
- Revisions to Regulation S-X that would standardize reporting of derivatives holdings in financial statements;
- Adoption of Rule 30e-3, to allow funds to provide website disclosure of shareholder reports in lieu of mailing; and
- Adoption of Form N-CEN, for reporting census-type information, and the rescission of Form N-SAR.

This *Dechert OnPoint* summarizes these key components of the Proposal and highlights issues that may be raised by this new reporting regime.

## New Form N-PORT and the Rescission of Form N-Q

### Overview

Form N-PORT would replace Form N-Q as the new portfolio holdings reporting form for registered management investment companies (mutual funds, closed-end funds, exchange-traded funds (ETFs)) and ETFs that are organized as unit investment trusts (UITs) (for purposes of the discussion relating to Form N-PORT, “funds”). Money market funds operating in accordance with Rule 2a-7 under the Investment Company Act of 1940 (Investment Company Act) and small business investment companies (SBICs) would not be required to file reports on Form N-PORT.<sup>2</sup> Funds

---

<sup>1</sup> *Investment Company Reporting Modernization*, Rel. No. IC-31610 (May 20, 2015) (referred to herein as Proposing Release or the Proposal). At the same meeting, the SEC also approved another proposal under the Investment Advisers Act of 1940, as amended (Advisers Act) to amend: (i) Form ADV to provide additional information regarding investment advisers registered under the Advisers Act; and (ii) the books and records rule and other technical rules under the Advisers Act. See *Amendments to Form ADV and Investment Advisers Act Rules*, Rel. No. IA-4091 (May 20, 2015).

<sup>2</sup> Pursuant to Rule 30b1-7 under the Investment Company Act, money market funds are required to file with the SEC a monthly report of portfolio holdings on Form N-MFP, current as of the last business day of the previous month, no later than the fifth business day of each month.

would be required to electronically file monthly, instead of quarterly, portfolio investment information with the SEC in a structured data format<sup>3</sup> no less than 30 days after each month's end. Information filed on Form N-PORT for the third month of the fund's fiscal quarter would be publicly available 60 days after the end of a fund's fiscal quarter.<sup>4</sup>

Form N-PORT would require reporting of additional information regarding a fund's investment strategies, including identification of a wide range of securities, commodities, currencies, derivatives, and other investments in which a fund may invest. Further, Form N-PORT would require certain information about a fund's use of securities lending, repurchase agreements, and reverse repurchase agreements. The form would require funds to calculate and report certain risk metrics regarding investments in derivatives and debt securities. Form N-PORT also would require funds to provide information regarding fund flows and the market liquidity and pricing of portfolio investments. Each substantive part of the form is discussed in further detail below.

### ***Form N-PORT, Part A: General Information***

Form N-PORT would require certain identifying information about a fund. Funds offering multiple series would be required to file a separate report for each series, even if the information for those series is identical and would be duplicative.<sup>5</sup> Part A would require that a fund provide its name, Investment Company Act file number, CIK number, Legal Entity Identifier (LEI),<sup>6</sup> address, and telephone number. If a fund has separate series, it would be required to report the name of the series, EDGAR series identifier, and the LEI of the series completing the report. Funds would also have to disclose the date of fiscal year-end and the date as of which information is reported.

### ***Form N-PORT, Part B: Information about the Fund***

Form N-PORT would require information about a fund's portfolio investments as of the close of the preceding month.

- ***Assets and liabilities.*** A fund would report total assets, total liabilities, and net assets. The fund also would separately report information about:
  - assets attributable to "miscellaneous securities";<sup>7</sup>
  - assets invested in a Controlled Foreign Corporation (CFC) for the purpose of investing in certain types of instruments, including each underlying investment in the CFC;

---

<sup>3</sup> The SEC is proposing the use of Extensible Markup Language (XML) on Form N-PORT, as is currently required on Form N-MFP and Form PF.

<sup>4</sup> The SEC states that it does not intend to make public the information reported on Form N-PORT for the first and second months of each fund's fiscal quarter. However, the SEC stated that it may use any nonpublic information reported on Form N-PORT for examinations, investigations and enforcement actions.

<sup>5</sup> One issue this raises is whether the SEC's EDGAR filing system has the capacity to handle the volume of Form N-PORT filings that funds will make every month. Under the current reporting regime, individual series of a registrant do not make separate Form N-Q filings, and Form N-Q filings are staggered based on a fund's fiscal year.

<sup>6</sup> The LEI is a unique identifier associated with a single corporate entity, as assigned or recognized by the Global LEI Regulatory Oversight Committee or the Global LEI Foundation. Funds that have not yet obtained an LEI would be required to obtain one from a Global Markets Entity Identifier Utility for a fee. Funds would also have to pay an annual fee to maintain the LEI. At the open meeting at which the Proposal was approved, Commissioner Piwowar stated, "I am concerned that this requirement would result in the Commission helping to establish a monopoly for the provision of legal identifiers."

<sup>7</sup> Funds would be able to report an aggregate amount, not exceeding 5% of the total value of the portfolio investments, in one amount as "miscellaneous securities," provided that securities so listed: are not restricted; have been held for not more than one year prior to the date of the related balance sheet; and have not previously been reported by name to shareholders or set forth in any registration statement, application, or annual report or otherwise made available to the public.

- borrowings attributable to amounts payable for notes payable, bonds, and similar debt;
  - payables for investments purchased either on a delayed delivery, when-issued or other firm commitment basis, or on a standby commitment basis; and
  - the liquidation preference of any outstanding preferred stock issued by the fund.
- *Portfolio level risk metrics.* Form N-PORT would require certain funds to disclose various portfolio level risk metrics relating to the use of debt instruments and derivatives that provide exposure to debt or debt instruments. Only funds that have notional value of debt investments of 20% or more of the fund's net asset value would be required to disclose this information on Form N-PORT.<sup>8</sup>

The proposed risk metrics include measurements of interest rate risk and credit spread risk. A fund would be required to calculate the change in value of its portfolio resulting from a one basis point change in interest rates (e.g., 0.01%) for each currency to which it is exposed at specified maturities.<sup>9</sup> A fund also would be required to calculate the change in the value of its portfolio resulting from a one basis point change in credit spreads at the same maturities for calculating interest rate risk, aggregated by non-investment grade and investment grade exposures.<sup>10</sup>

- *Securities lending counterparties.* A fund would be required to disclose the full name and LEI of each securities lending counterparty and the aggregate value of all securities on loan to that counterparty. The Proposal suggested that this will allow the SEC and investors to better understand and monitor potential counterparty risk as a result of a fund's security lending program.
- *Return information.* A fund would be required to report monthly total returns for each of the preceding three months, using the same calculation method currently used to report return information in the performance table of the risk-return summary of the fund's prospectus and sales materials. Multi-class funds would report total return information for each class.

Form N-PORT would require funds to disclose for each of the preceding three months the monthly net realized gain (or loss) and net change in unrealized appreciation (or depreciation) arising from certain derivative contracts and investments other than derivatives.<sup>11</sup> The Proposal indicates that this disclosure is modeled after Financial Accounting Standards Board Accounting Series Codification 815. Every third month

---

<sup>8</sup> Form N-PORT would define notional value as the sum of the absolute values of: (i) the value of each debt security; (ii) the notional amount of each swap (including, but not limited to, total return swaps, interest rate swaps and credit default swaps) for which the underlying reference asset or assets are debt securities or an interest rate; and (iii) the delta-adjusted notional amount of any option for which the underlying reference asset is an asset described in clause (i) or (ii).

<sup>9</sup> The Proposal identified this measure as "DV01." Funds would be required to calculate DV01 for each of the following maturities: 1-month, 3-month, 6-month, 1-year, 2-year, 3-year, 5-year, 7-year, 10-year, 20-year, and 30-year. A fund would only be required to report key rates that are applicable to the fund (e.g., a short-term bond fund would not be required to disclose DV01 for 30 years).

<sup>10</sup> The Proposal identified this measure as "SDV01." Funds would be required to calculate SDV01 for each of the following maturities: 1-month, 3-month, 6-month, 1-year, 2-year, 3-year, 5-year, 7-year, 10-year, 20-year, and 30-year. Form N-PORT defines "Investment Grade" as "an investment that is sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time and is subject to no greater than moderate risk." "Non-Investment Grade" means any investment that is not Investment Grade. These definitions are the same as those used in Form PF.

<sup>11</sup> The categories of derivatives contracts are: (i) commodity contracts; (ii) credit contracts; (iii) equity contracts; (iv) foreign exchange contracts; (v) interest rate contracts; and (vi) other derivative contracts.

(e.g., the third month of each fiscal quarter), a fund's return information for the prior three months would be publicly available.

- *Flow information.* Similar to information currently reported on Form N-SAR, Form N-PORT would require a fund to separately report the aggregate dollar amounts for sales and redemptions/repurchases of fund shares during each of the preceding three months. Specifically, a fund would report the total net asset value of: (i) shares sold (including exchanges but excluding reinvestment of dividends and distributions); (ii) shares sold in connection with reinvestments of dividends and distributions; and (iii) shares redeemed or repurchased, including exchanges.

### **Form N-PORT, Part C: Schedule of Portfolio Investments**

Form N-PORT would require a fund to disclose certain information about each of its portfolio investments and its consolidated subsidiaries as of the close of the preceding month's end.

- *Identification of investment.* With respect to each investment, a fund would be required to report the name of any issuer, LEI of the issuer, title of the issue or description of the investment, CUSIP, and at least one other identifier and indicate the type of identifier used.
- *Amount of each investment.* With respect to each investment, a fund would be required to report the balance (number of shares held, principal amount, units, or number of contracts, etc.), the value in U.S. Dollars, and percentage value compared to the net assets of the fund. Funds would also report the currency in which an investment is denominated and, if not denominated in U.S. Dollars, the exchange rate used to calculate value.
- *Payoff profile.* A fund would be required to indicate whether it is holding an investment long, short, or not applicable (N/A).
- *Asset and issuer type.* A fund would report the asset and issuer type for each investment selected from categories set forth in Form N-PORT, which are based on categories required to be reported by private funds on Form PF.
- *Country of investment or issuer.* A fund would disclose the country of investment or issuer, using the ISO country code, based on the concentrations of the risk and economic exposure of the investment.<sup>12</sup> If the country of organization is different than the country of risk or economic exposure, a fund would also disclose the country of organization.
- *Restricted security (Y/N).*
- *Illiquid asset (Y/N).*
- *Fair value hierarchy.* Funds would report the level within the fair value hierarchy in which the fair value measurements fall pursuant to U.S. GAAP (Level 1, Level 2, or Level 3).

---

<sup>12</sup> Neither Form N-PORT nor the Proposing Release provides any guidance about how a fund should determine the country with the greatest concentration of risk and economic exposure; however, the SEC has requested comment on whether it should provide specific guidance or instructions for determining the country with the greatest concentration of risks and economic exposure.

- *Securities lending.* With respect to each investment, a fund would be required to report whether: (i) any amount of the investment represents reinvestment of cash collateral received for loaned securities, and, if so, the value of investment representing cash collateral; (ii) any portion of the investment represents non-cash collateral received for loaned securities, and, if so, the value representing the non-cash collateral; and (iii) any portion of the investment is on loan by the fund, and, if so, the value of the security on loan.

Form N-PORT would require funds to report additional detailed information regarding: (i) debt and convertible securities; (ii) repurchase agreements and reverse repurchase agreements; and (iii) derivatives. Please see [Appendix A](#), which outlines the reporting requirements for those investments.

#### ***Form N-PORT, Part D: Miscellaneous Securities***

As noted above, funds may report certain investments as “miscellaneous securities,” subject to certain conditions. Part D would require funds to provide on an investment-by-investment basis the same information about each security as required in Part C discussed above. Information reported in Part D would not be made public.

#### ***Form N-PORT, Part E: Explanatory Notes***

Form N-PORT would permit, but not require, funds to provide explanatory notes relating to the filing. Any notes provided in the public filings of the form (*i.e.*, those filings made during the third month of a fund’s fiscal quarter) would be publicly available, whereas notes provided in other filings would be non-public. A fund also may use Part E to provide any information it believes would be helpful in understanding information reported in Form N-PORT.

#### ***Form N-PORT, Part F: Exhibits***

With respect to Form N-PORT filings for the end of the first and third quarters of a fund’s fiscal year, the fund would be required to include an exhibit disclosing the fund’s complete portfolio holdings as of the close of the period covered by the report. The information in this exhibit would not be audited or certified and would be presented in accordance with Regulation S-X. In other words, the schedule would be in a format similar to that currently used in Form N-Q.<sup>13</sup> The Proposing Release states that these exhibits have been proposed in order to present portfolio holdings schedules in a format to which individual investors are accustomed.

#### ***Rescission of Form N-Q***

Given that the information to be reported on Form N-PORT would be duplicative of Form N-Q, the SEC proposed to rescind Form N-Q. Rescission of Form N-Q would eliminate certifications as to the accuracy of the portfolio schedules reported for the first and third fiscal quarters. However, the certifications for portfolio schedules reported for the second and fourth fiscal quarters on Form N-CSR would remain, with appropriate amendments to require certifications for the semi-annual period covered in the filing.

---

<sup>13</sup> Currently, a fund is required to file with the Commission portfolio schedules for the fund’s first and third fiscal quarters on Form N-Q within 60 days of the end of the quarter, at which time the information becomes publicly available. Form N-PORT would be filed within 30 days of the end of a fund’s first and third fiscal quarters, although the information reported on Form N-PORT would not be publicly available until 60 days after the reporting period. Therefore, funds would have less time to prepare and file their portfolio holdings information with Form N-PORT, but such information will not be disseminated publicly any sooner than it is currently on Form N-Q.

## Amendments to Regulation S-X

### Overview

Regulation S-X prescribes the content and form of financial statements as reported in registration statements and shareholder reports. The Commission proposed certain amendments to Regulation S-X that are consistent with the enhanced reporting regime outlined in Form N-PORT. Specifically, the proposed amendments would require additional disclosures regarding a fund's derivative investments, including the requirement that derivative investments receive prominent placement in the fund's financial statements, rather than permitting such disclosures in the notes. Additionally, the proposed amendments would require a new disclosure in the notes relating to a fund's securities lending activity.

### Enhanced Derivatives Disclosure

The proposed amendments to Article 12 of Regulation S-X set forth standardized schedules for reporting open futures contracts, open forward foreign currency contracts, and open swap contracts, as well as amending the current schedule for reporting purchased and written options contracts. Additionally, the Proposal included new instructions regarding the format and display of disclosures regarding derivative contracts, which instructions are consistent with current Rule 12-12 and 12-13. Please see [Appendix B](#) for details about the derivatives disclosures.

### Additional Regulation S-X Amendments

The Proposal included several proposed amendments to Regulation S-X, among others:

- Revising Instruction 2 of Rule 12-12 to require funds to categorize the schedule of investments by type of investment, the related industry, and the related country or geographic region;<sup>14</sup>
- Adding an instruction to Rule 12-12 that would require a fund to indicate the interest rate or preferential dividend rate and maturity rate for certain enumerated debt instruments;<sup>15</sup>
- Amending the instructions to require funds to indicate whether any portion of a security held in connection with open put or call option contracts or loans for short sales is on loan;<sup>16</sup> and
- Amending Rule 12-14 to require funds to disclose additional information regarding their investments in, and advances to, affiliates.<sup>17</sup>

Finally, the Proposal would rescind Rule 6-10(a), which would result in funds being required to include all schedules required by Rule 6-10, including the enhanced derivatives reporting discussed above, within their financial statements, rather than in the notes to the financial statements. In addition, funds would be required to disclose details of their securities lending activities and cash collateral management.

---

<sup>14</sup> Currently, a fund may categorize investments by industry, country, or geographic region.

<sup>15</sup> If a security is a variable rate security, the funds would describe the referenced rate and spread.

<sup>16</sup> Funds would also have to identify investments categorized in Level 3 of the fair value hierarchy and identify any securities that are illiquid.

<sup>17</sup> Please see Appendix B for details about the additional disclosure regarding investments in, and advances to, affiliates.

## Website Transmission of Shareholder Reports

The SEC proposed new Rule 30e-3 under the Investment Company Act, which would permit, but not require, a fund to satisfy current shareholder report delivery obligations by making the reports and certain other materials accessible on its website. The SEC noted in the Proposing Release that funds and their shareholders would “benefit from the reductions in related printing and mailing costs” resulting from use of this rule. Nevertheless, the SEC acknowledged that there likely will be a significant minority of investors who would prefer receiving shareholder reports in paper, and accordingly the SEC constructed Rule 30e-3 to protect an investor’s choice to continue to receive printed reports. As proposed, Rule 30e-3 would only be available with respect to shareholder reports, and funds would not be able to rely on the new rule to satisfy delivery obligations for statutory prospectuses or Statements of Additional Information.

Under Rule 30e-3, a fund’s report to shareholders posted on the fund’s website would be considered transmitted to a shareholder if certain conditions are satisfied. The Proposing Release noted that these conditions are generally consistent with similar conditions in other rules adopted by the SEC. The conditions include:

- *Availability of report and other materials.* A fund’s report to shareholders would have to be publicly accessible at a specified website address, free of charge. A fund would be required to provide shareholders with ongoing access to the report from the date of intended transmission until the date that the fund transmits its next shareholder report. In addition to the most current shareholder report, a fund would also be required to post any previous shareholder report transmitted to shareholders of record within the last 244 days, and the fund’s complete portfolio holdings as of the close of its most recent first and third fiscal quarters after the date on which its registration statement becomes effective (for funds that are not money market funds or SBICs).<sup>18</sup>

The website address on which the shareholder reports and other required portfolio information would be made accessible cannot be the Commission’s website address for electronic filing. The materials required to be posted on the website would have to be presented in a format that is convenient for both reading online and printing on paper, and persons accessing the materials would have to be able to permanently retain an electronic copy of the materials, free of charge. Similar to Rule 498 for summary prospectuses, Rule 30e-3 would include a safe harbor provision that would allow a fund to continue relying on the rule even if the fund did not meet the posting requirements of the rule for a temporary period of time.<sup>19</sup>

- *Shareholder consent.* A fund would be permitted to rely on Rule 30e-3 for website posting of shareholder reports with respect to a particular shareholder only if that shareholder had either previously consented to this method of transmission or had provided implied consent. To obtain implied consent, a fund would be required to transmit to the shareholder a separate written statement (Initial Statement) notifying the shareholder of the fund’s intent to make future shareholder reports available on the fund’s website until the shareholder revokes consent. A fund would have to provide the Initial Statement to the shareholder at least 60 days before the fund begins to rely on Rule 30e-3. The Initial Statement would be required to be in plain English and include certain information specified by Rule 30e-3. Rule 30e-3 would require a fund to mail the

<sup>18</sup> This is the same information that a fund would be required to file as an exhibit to Form N-PORT.

<sup>19</sup> In order to rely on this safe harbor, a fund would need to adopt reasonable procedures to ensure that the required materials are posted on its website in the manner set forth by the rule and to take action to correct non-compliance with the posting requirements as soon as reasonably practicable following the earlier of the time at which the fund knows or reasonably should have known that the required documents are not available in a manner prescribed by the rule.

Initial Statement and provides that the Initial Statement cannot be incorporated into or combined with another document or sent along with other shareholder communications (subject to certain exceptions).

- *Notice.* In addition to the Initial Statement, Rule 30e-3 would require a fund to send a notice (Notice) to a shareholder who has consented to electronic transmission within 60 days of the close of the fiscal period to which the report relates. According to the Proposal, the Notice is designed to alert a shareholder to the availability of a report online and to provide information as to how to obtain a paper copy of the report should a shareholder want one. Like the Initial Statement, a Notice would be required to be in plain English and include certain information specified by the proposed rule. Further, the Notice could not be incorporated into or combined with another document or sent along with other shareholder communication. Funds also would be required to file the Notice with the SEC within 10 days of its transmission to shareholders.
- *Delivery upon request.* Rule 30e-3 would require that a fund send a paper copy of its most recent annual and semi-annual reports and portfolio holdings as of its most recent first and third fiscal quarters, to any person requesting a copy, within three business days after receiving such a request.
- *Use of summary schedule of investments.* Funds that rely on proposed Rule 30e-3 would be restricted from providing a summary schedule of portfolio investments in their shareholder reports in lieu of a complete schedule—a practice that is currently allowed.

## **New Form N-CEN and Rescission of Form N-SAR**

The SEC proposed new Form N-CEN, which would replace Form N-SAR as the form on which funds would report census-type information. The SEC also proposed the rescission of Form N-SAR.

### ***Who Must File Reports on Form N-CEN***

Under the Proposal, all registered investment companies except face amount certificate companies (for purposes the discussion related to N-CEN, “funds”) would be required to file reports on Form N-CEN in XML (structured data format). Series companies would be required to file a separate Form N-CEN for each series. This is different than Form N-SAR, which is filed at the registrant level. As discussed below, different registrants will be required to complete different sections of Form N-CEN.

### ***Frequency of Reporting and Filing Deadline***

The SEC proposed that all funds would file reports on new Form N-CEN annually, as opposed to semi-annually, as is currently required for reports on Form N-SAR. Form N-CEN would be filed 60 days after the end of a fund’s fiscal year-end.<sup>20</sup>

### ***Information Required to be Reported on Form N-CEN***

All funds would complete Part A and Part B of Form N-CEN. Part A would require general information about the covered reporting period. Part B would require certain background information about the fund in order to allow the SEC staff to quickly categorize filers by the fund type. Specifically, Part B would require a fund to disclose:

---

<sup>20</sup> If a fund changes its fiscal year, a report filed on Form N-CEN may cover a period shorter than 12 months, but it may not cover a period longer than 12 months or a period that overlaps with a period covered by a previously filed report.

- Its CIK and LEI;
- The location of its books and records;<sup>21</sup>
- Whether it issues a class of securities registered under the Securities Act of 1933;
- Information regarding the fund's receipt of "financial support" from an affiliated entity;<sup>22</sup> and
- Whether the fund relied on exemptive orders granted to the fund by the Commission during the reporting period.

Part C of Form N-CEN would be completed by funds (other than SBICs). Like Form N-SAR, the form would include general identifying information about the funds and any series thereof; however, unlike Form N-SAR, the new form would request specific information about the classes of open-end management companies. Among other requirements, Part C would require a fund to disclose:

- If it seeks to operate as a non-diversified company as defined in Section 5(b)(2) of the Investment Company Act;
- If it invests in a CFC for the purpose of investing in certain types of instruments, such as commodities;
- Certain information about securities lending activities, including whether: any borrower has defaulted; the identity of any affiliated or unaffiliated securities lending agent; and the revenue split of securities lending arrangements; and
- Information relating to fund expense limitations with greater specificity than is currently required on Form N-SAR.<sup>23</sup>

Similar to Form N-SAR, Form N-CEN would require closed-end funds and SBICs to report additional information in Part D.<sup>24</sup> There are few differences between disclosures required by Part D of Form N-CEN and those required by Part D of Form N-SAR. One difference is that, on Form N-CEN, closed-end funds and SBICs would disclose information relating to rights offerings and secondary offerings, including whether there was such an offering during the reporting period and the type of security involved.

---

<sup>21</sup> According to the Proposing Release, the SEC believes that "having books and records information in a structured format would increase [its] efficiency in preparing for exams as well as [its] ability to identify current industry trends and practices." Corresponding changes would be made to Form N-1A to eliminate the requirement in Part C that funds disclose the location of their books and records.

<sup>22</sup> In the Proposing Release, the SEC noted that the proposed definition of financial support was modeled on the definition set forth on Form N-CR, which was a new form adopted as part of the 2014 amendments to Rule 2a-7 and related rules governing money market funds. Although the SEC acknowledged that it believes financial support for non-money market funds "is an infrequent practice," the Proposing Release stated that this item "would allow Commission staff to readily identify any funds that have received such support for further analysis and review, as appropriate." A fund that has received financial support would be required to provide more detailed information as an attachment to Form N-CEN.

<sup>23</sup> A fund would be required to disclose: any expense limitations in place; whether any amounts had been waived or reduced under the arrangement during the reporting period; whether the fees waived are subject to recoupment; and whether any expenses previously waived were recouped during the reporting period.

<sup>24</sup> SBICs would be required to complete Part D in lieu of Part C, while closed-end funds would complete Part C and Part D.

Part E relates specifically to ETFs. The SEC proposed to require that ETFs annually report summary information about creation units and primary market transactions. In addition, Form N-CEN would require each ETF to report identifying information about its authorized participants and the dollar value of the ETF shares purchased and redeemed by the authorized participants from the ETF during the reporting period.

Part F would require information specific to UITs. Form N-CEN would differentiate between UITs that are separate accounts of insurance companies and those that are not. The form would also require certain new information to be reported by separate accounts offering variable annuity and variable life insurance contracts.

Like Form N-SAR, Part G of Form N-CEN would require descriptive attachments to the filing; however, the SEC sought to limit the number of attachments to the form in order to simplify the filing process while simultaneously maximizing the amount of information received in XML format. All of the attachments proposed under Form N-CEN are currently required by Form N-SAR, except for the attachment related to the provision of financial support.<sup>25</sup>

### ***Items Required by Form N-SAR that would be eliminated by Form N-CEN***

Form N-CEN would eliminate a number of Form N-SAR items. For example, Form N-CEN does not require funds to report information related to:

- adjustments to shares outstanding by stock split or stock dividend;
- minimum initial investments; investment practices;
- portfolio turnover; number of shares outstanding;
- number of shareholder accounts; and
- average net assets.

The Proposal would also eliminate certain reporting requirements specifically applicable to SBICs and UITs, because the SEC believes these items provide minimal benefit to the SEC but impose a significant cost on funds.

## **Proposed Compliance Dates**

The SEC proposed different compliance dates for various aspects of the Proposal. Form N-PORT would have a tiered compliance period. Larger entities would have a compliance period of 18 months,<sup>26</sup> while smaller entities would have a compliance period of 30 months.<sup>27</sup> The proposed amendments to Regulation S-X would have a compliance period of eight months. Because reliance on proposed Rule 30e-3 would be optional, the SEC has proposed that funds be able to rely on the rule immediately upon effectiveness (e.g., there is no compliance period). Given the similarity of Form N-CEN and Form N-SAR, the SEC proposed a compliance period of 18 months for all funds.

---

<sup>25</sup> As noted above, if a fund has received financial support, it would be required to provide detailed information about the financial support arrangement.

<sup>26</sup> A “large entity” is defined as a fund that, together with other investment companies in the same group of related investment companies (as defined in Rule 0-10 under the Investment Company Act), had assets of \$1 billion or more as of the end of the most recent fiscal year.

<sup>27</sup> A “small entity” is defined as a fund that, together with other investment companies in the same group of related investment companies (as defined in Rule 0-10 under the Investment Company Act), had assets of less than \$1 billion as of the end of the most recent fiscal year.

## Conclusion

Overall, the Proposal sets forth significant potential changes to the reporting regime for most funds. In some cases, the Proposal may substantially increase the reporting burden for funds. On the other hand, new Rule 30e-3, which would permit website postings to satisfy shareholder report delivery requirements, could result in a reduction in costs related to the production and mailing of these reports. Comments on the Proposal are due 60 days after its publication in the Federal Register. It is expected that the Proposal will be published in the Federal Register on June 12, 2015.<sup>28</sup> Therefore, comments would be due by August 11, 2015.

This update was authored by\*:



**Megan Johnson**  
Partner  
Washington, D.C.  
+1 202 261 3351  
megan.johnson@dechert.com



**Stephen Cohen**  
Associate  
Washington, D.C.  
+1 202 261 3304  
stephen.cohen@dechert.com

\* The authors would like to thank **Brooke Higgs** and **Kimberly Thomasson** for their contributions.

---

<sup>28</sup> See Fed. Reg. Public Insp. List Items, available [here](#).

## Appendix A – Form N-PORT, Items C.9 – C.11

Type of Investment	Required Data
<b>Debt Securities (Item C.9)</b>	<ul style="list-style-type: none"> <li>• Maturity date;</li> <li>• Coupon (identifying the type as either fixed, floating, variable, or none and indicating the annualized rate);</li> <li>• Whether the security is currently in default;</li> <li>• Whether interest payments are in arrears;</li> <li>• Whether any coupon payments have been legally deferred; and</li> <li>• Whether any portion of the interest is paid in kind.</li> </ul>
<b>Convertible Securities (Item C.9.f)</b>	<ul style="list-style-type: none"> <li>• Whether the conversion is mandatory or contingent;</li> <li>• Conversion ratio;</li> <li>• Information about the asset into which the debt is convertible; and</li> <li>• Delta.<sup>1</sup></li> </ul>
<b>Repurchase and Reverse Repurchase Agreements (Item C.10)</b>	<ul style="list-style-type: none"> <li>• Whether the instrument is a repurchase agreement (fund is the cash lender and recipient of collateral) or a reverse repurchase agreement (fund is the cash borrower and poster of collateral);</li> <li>• Whether the transaction is cleared by a central counterparty;<sup>2</sup></li> <li>• Whether the agreement is tri-party;</li> <li>• Maturity date;</li> <li>• Principal amount;</li> <li>• Value of collateral; and</li> <li>• Category of investment that most closely represents the collateral.<sup>3</sup></li> </ul>

<sup>1</sup> Delta is the ratio of the change in value of the option to the change in value of the asset into which the debt is convertible.

<sup>2</sup> Funds would provide only the name of the counterparty; however, if the agreement is not cleared by a central counterparty, funds would also provide the name and LEI of the over-the-counter counterparty.

<sup>3</sup> The categories include: asset-backed securities; agency collateralized mortgage obligations; agency debentures and agency strips; agency mortgage-backed securities; private label collateralized mortgage obligations; corporate debt securities; equities; money market; U.S. Treasuries (including strips); and other instruments. In the case of an “other instrument,” funds would include a brief description, including whether it is a collateralized debt obligation, municipal debt, whole loan, or international debt.

Type of Investment	Required Data
<b>All Derivative Contracts (Item C.11)</b>	<ul style="list-style-type: none"> <li>• Category of derivative contract (forwards, futures, options, swaptions, swaps, warrants, and other);</li> <li>• Name and LEI of the counterparty (including central counterparties);</li> <li>• Description of the reference instrument, if applicable (including the name of the issuer, title of issue, and relevant securities identifier);<sup>4</sup> and</li> <li>• Unrealized appreciation or depreciation.</li> </ul>
<b>Additional Information for Options, Warrants, and Options on a Derivative (e.g., Swaptions) (Item C.11.c)</b>	<ul style="list-style-type: none"> <li>• Type (e.g., put or call);</li> <li>• Payoff profile (e.g., written or purchased);</li> <li>• Number of shares or principal amount of underlying reference instrument per contract;</li> <li>• Exercise price or rate;</li> <li>• Expiration date; and</li> <li>• Delta</li> </ul>
<b>Additional Information for Futures and Forwards (other than Foreign Exchange Forwards) (Item C.11.d)</b>	<ul style="list-style-type: none"> <li>• Payoff profile;</li> <li>• Expiration date; and</li> <li>• Aggregate notional amount or contract value on the trade date.</li> </ul>
<b>Additional Information for Foreign Exchange Forwards and Swaps (Item C.11.e)</b>	<ul style="list-style-type: none"> <li>• Amount;</li> <li>• Description of currency sold;</li> <li>• Description of currency purchased; and</li> <li>• Settlement date.</li> </ul>
<b>Additional Information for Swaps (other than Foreign Exchange Swaps) (Item C.11.f)</b>	<ul style="list-style-type: none"> <li>• Description and terms of payments necessary for a user of financial information to understand the terms of payments to be paid and received;</li> <li>• Financing rate;</li> <li>• Payment frequency;</li> <li>• Termination or maturity date;</li> <li>• Upfront payments or receipts; and</li> <li>• Notional amount.</li> </ul>

<sup>4</sup> If the reference instrument is a derivative, funds would report the type of derivative and provide all information required to be reported on Form N-PORT for that type. If the reference instrument is an index for which the index components are publicly available on a website and updated no less than quarterly, funds would be required to identify the index and provide the index identifier, if any. If the index components are not publicly available and the notional amount of the derivative represents one percent or less of the net asset value, funds would be required to provide only a narrative description of the index. If the notional amount is more than one percent and the index components are not publicly available, funds would provide the name, identifier, number of shares or notional amount or contract value as of the trade date, value, and unrealized appreciation or depreciation of every component in the index. At the SEC's open meeting, Commission Piwowar expressed concern that index providers may not be willing to have the components of their indices publicly disclosed and that this requirement would negatively impact funds that make such investments as well as the index providers.

Type of Investment	Required Data
<b>Additional Information for All Other Derivatives that do not Fall into the Enumerated Categories (Item C.11.g)</b>	<ul style="list-style-type: none"><li>• Description of the terms and nature of the investment sufficient for a user of financial information to understand the nature and terms;</li><li>• Currency;</li><li>• Payment terms;</li><li>• Payment rates;</li><li>• Put or call feature;</li><li>• Exercise price;</li><li>• Termination or maturity (if any);</li><li>• Notional amount(s); and</li><li>• Delta (if applicable).</li></ul>

## Appendix B – Regulation S-X Derivatives Disclosures

### Open Option Contracts Written - New Rule 12-13

Proposed Rule 12-13 would require funds to disclose additional information regarding their open written option contracts. The same disclosures would apply to purchased options. The table below summarizes the changes applicable to open option contracts reported under current Rule 12-12B and proposed Rule 12-13 (**bold** indicates a change or new item; ~~strike through~~ indicates that the item is no longer reported).

Current Rule 12-12B	Proposed Rule 12-13
<del>Name of issuer</del>	<b>Description of the contract</b>
	<b>Counterparty</b>
Number of contracts	Number of contracts
	<b>Notional amount</b>
Exercise price	Exercise price
Expiration date	Expiration date
Value	Value

The Proposal notes that if an investment contains any sort of optionality (e.g., a swaption), funds would be required to disclose the investment under both the swaps rule (proposed Rule 12-13C) and the options rule (proposed Rule 12-13). If the description of the contract includes an underlying investment tied to an index, funds would follow the disclosure requirements proposed in Form N-PORT.<sup>1</sup>

Additional proposed instructions and amendments to the instructions to Rule 12-13 would be applicable across all derivatives reporting schedules to maintain consistency in reporting. The proposed instructions would require funds to indicate if an investment cannot be sold because of restrictions or conditions imposed on the investment or if a security's fair value was determined using "significant unobservable inputs,"<sup>2</sup> and to identify illiquid investments.

### Open Futures Contracts - New Rule 12-13A

Proposed Rule 12-13A would require funds to disclose additional information regarding open futures contracts. A new instruction would require funds to reconcile the total of the unrealized appreciation/depreciation column to the total variation margin receivable or payable on the related balance sheet. Additional proposed instructions would require funds to disclose certain characteristics about open futures contracts including whether the contract cannot be sold due to restrictions or if the contract is an illiquid investment. The table below summarizes the changes applicable to open futures contract reported under current Rule 12-13 and proposed Rule 12-13A (**bold** indicates a change or new item).

<sup>1</sup> See *supra* Appendix A, n.4 (discussing the *de minimis* threshold for reporting index components which are not publicly available).

<sup>2</sup> This is consistent with investments categorized as Level 3 in the fair value hierarchy pursuant to U.S. GAAP.

Current Rule 12-13	Proposed Rule 12-13A
Description of the contract	Description of the contract
Number of contracts	Number of contracts
Expiration date	Expiration date
Unrealized appreciation/depreciation	Unrealized appreciation/depreciation
	<b>Notional amount</b>
	<b>Value</b>

#### Open Forward Foreign Currency Contracts - New Rule 12-13B

Proposed Rule 12-13B would require funds to disclose additional information regarding their open forward foreign currency contracts, including whether a foreign currency contract cannot be sold due to restrictions or if the foreign currency contract is an illiquid investment. The table below summarizes the changes applicable to open forward foreign currency contracts reported under current Rule 12-13 and proposed Rule 12-13B (**bold** indicates a change or new item).

Current Rule 12-13	Proposed Rule 12-13B
Amount and description of currency to be purchased	Amount and description of currency to be purchased
Amount and description of currency to be sold	Amount and description of currency to be sold
	<b>Counterparty</b>
Settlement date	Settlement date
Unrealized appreciation/depreciation	Unrealized appreciation/depreciation

#### Open Swap Contracts - New Rule 12-13C

Proposed Rule 12-13C would require funds to disclose additional information regarding their open swap contracts, including whether a swap contract cannot be sold due to restrictions or if the swap contract is an illiquid investment. Additionally, for swap contracts with an underlying investment tied to an index, a fund would follow the disclosure requirements as required by Form N-PORT.<sup>3</sup> The table below summarizes the changes applicable to open swap contracts reported under current Rule 12-13 and proposed Rule 12-13C (**bold** indicates a change or new item).

Current Rule 12-13	Proposed Rule 12-13C
Description and terms of payments to be received from another party	Description and terms of payments to be received from another party
Description and terms of payments to be made to another party	Description and terms of payments to be made to another party

<sup>3</sup> See *supra* Appendix A, n.4 (discussing the de minimis threshold for reporting index components that are not publicly available).

Current Rule 12-13	Proposed Rule 12-13C
	<b>Counterparty</b>
Maturity date	Maturity date
Notional amount	Notional amount
	<b>Value</b>
	<b>Upfront payments/receipts</b>
Unrealized appreciation/depreciation	Unrealized appreciation/depreciation

#### Investments in and Advances to Affiliates - Amendments to Rule 12-14

Proposed amendments to current Rule 12-14 would require a fund to disclose additional information regarding its investments in, and advances to, affiliates. A fund would disclose total realized gain or loss and total net increase or decrease in unrealized appreciation or depreciation for affiliated investments. The table below summarizes the changes applicable to investments in and advances to affiliates under current Rule 12-14 and proposed amendments to Rule 12-14 (**bold** indicates a change or new item; ~~strike through~~ indicates that the item is no longer reported).

Current Rule 12-14	Amended Rule 12-14
Name of issuer and title of issue or nature of indebtedness	Name of issuer and title of issue or nature of indebtedness
Number of shares—principal amount of bonds, notes, and other indebtedness held at the close of period	Number of shares—principal amount of bonds, notes, and other indebtedness held at the close of period
<del>Amount of equity in net profit and loss for the period</del>	<b>Net realized gain or loss for the period</b>
	<b>Net increase or decrease in unrealized appreciation or depreciation for the period</b>
Amount of dividends or interest (1) Credited to income (2) Other	Amount of dividends or interest (1) Credited to income (2) Other
Value of each item at close of period	Value of each item at close of period

© 2015 Dechert LLP. All rights reserved. This publication should not be considered as legal opinions on specific facts or as a substitute for legal counsel. It is provided by Dechert LLP as a general informational service and may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome. We can be reached at the following postal addresses: in the US: 1095 Avenue of the Americas, New York, NY 10036-6797 (+1 212 698 3500); in Hong Kong: 27/F Henley Building, 5 Queen's Road Central, Hong Kong (+852 3518 4700); and in the UK: 160 Queen Victoria Street, London EC4V 4QQ (+44 20 7184 7000). Dechert internationally is a combination of separate limited liability partnerships and other entities registered in different jurisdictions. Dechert has more than 900 qualified lawyers and 700 staff members in its offices in Belgium, China, France, Germany, Georgia, Hong Kong, Ireland, Kazakhstan, Luxembourg, Russia, Singapore, the United Arab Emirates, the UK and the US. Further details of these partnerships and entities can be found at [dechert.com](http://dechert.com) on our Legal Notices page.