

CLIENT MEMORANDUM

SEC Adopts Rules to Modernize Investment Company Reporting and Disclosure

November 8, 2016

AUTHORS

Rose F. DiMartino | Jay Spinola | Justin L. Browder | Arthur Damoulakis

On October 13, 2016, the Securities and Exchange Commission (the “SEC”) adopted new rules and forms (collectively, the “Reporting Modernization Rules”) that significantly expanded the information required to be reported by certain investment companies registered with the SEC under the Investment Company Act of 1940, as amended (the “Investment Company Act”).¹

According to the SEC’s adopting release (the “Adopting Release”), the Reporting Modernization Rules are intended to update the current reporting regime under the Investment Company Act, components of which are nearly thirty-years-old, and enhance the SEC’s ability to collect, analyze, and monitor portfolio composition and census information with respect to the majority of registered investment companies (each, a “fund”).² The adopted rules and forms largely track those proposed in the SEC’s May 20, 2015 proposing release (the “Proposing Release”)³ and consist of three key rulemakings:

1. **Form N-PORT**, which will replace existing Form N-Q and will require all registered management companies and exchange-traded funds (“ETFs”) organized as unit investment trusts (“UITs”) (but not money market funds and small business investment companies (“SBICs”)) to identify detailed information about all of their portfolio investments, including derivatives, as of the close of each month, as well as information about securities lending activities. The form will also require certain debt-concentrated funds to disclose portfolio risk metrics and risk data;

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2. **Revisions to Regulation S-X**, which will require funds and business development companies (“BDCs”) to include in their financial statements a standardized schedule containing detailed information about derivatives investments (similar to information required by Form N-PORT) and will also elicit information about securities lending activities; and
3. **Form N-CEN**, which will require funds to report detailed census-type information on an annual basis and will replace existing Form N-SAR.

Over the last twenty years, the asset management industry has significantly expanded the types of product offerings—such as ETFs and target date funds with asset allocation strategies—and increased investment by funds in non-traditional instruments, such as derivatives, currencies, and commodities. According to the Adopting Release, the SEC’s reporting system has not kept pace with the industry’s evolution, nor has its ability to assess the relative risks that investors face. The Reporting Modernization Rules are designed to increase portfolio and strategy transparency for both the SEC and investors, incorporate technological advances in data transmission and presentation, and eliminate redundant or needless reporting burdens that asset managers currently face.⁴ The Reporting Modernization Rules follow the recent adoption of enhanced reporting regimes for registered investment advisers, money market funds, and private funds.⁵

Notably, the SEC did not adopt Rule 30e-3, which was initially proposed in the Proposing Release. Rule 30e-3 would have permitted, but not required, funds to satisfy requirements under the Investment Company Act and rules thereunder to transmit reports to shareholders by making the reports and certain other materials available online, unless shareholders opt for paper copies.⁶ The SEC noted that, in light of the mixed comments that it received, additional consideration regarding the rule was appropriate. In public remarks, Chair White stated that she expects the SEC staff to continue analyzing proposed Rule 30e-3 and provide a recommendation with respect to its adoption before the end of calendar year 2016.⁷

Concurrently with its adoption of the Reporting Modernization Rules, the SEC also adopted new rules and amendments to certain rules and forms that will require certain registered investment companies to establish liquidity risk management programs and permit those companies to use “swing pricing” under certain circumstances, which we discuss in a separate Client Memorandum.⁸

Compliance Dates

The compliance date for Form N-PORT is June 1, 2018 for funds that are part of a “group of related investment companies” with aggregate net assets of \$1 billion or more as of the end of the most recent fiscal year of the fund; other funds must comply with the filing requirement by June 1, 2019.⁹

- The compliance date for the Regulation S-X amendments is August 1, 2017 for all funds.
- The compliance date for Form N-CEN is June 1, 2018 for all funds.

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The remaining sections of this memorandum summarize the key aspects of the Reporting Modernization Rules.

FORM N-PORT

As adopted, Form N-PORT will require all registered management companies and ETFs organized as UITs (but not money market funds and SBICs) to provide detailed information about their portfolio investments, including derivatives, as of the last business day of the month or, at the fund's election, as of the last calendar day of the month. The form will also elicit information about securities lending activities and, for certain funds, risk metrics and risk data. Funds will be required to submit the majority of information required under Form N-PORT in a structured XML data format, which is expected to assist the SEC in aggregating, extracting, and analyzing fund-specific and overall industry trends.¹⁰

Background

Under current Investment Company Act rules, funds (other than SBICs) must report their portfolio holdings to the SEC on Form N-Q as of the end of their first and third fiscal quarters¹¹ and on Form N-CSR as of the end of their second and fourth fiscal quarters.¹² The adoption of the Reporting Modernization Rules will have the effect of rescinding Form N-Q and replacing it with Form N-PORT, which will be filed monthly.

The following chart summarizes the general reporting requirements mandated by Form N-PORT with notable changes from the Proposing Release highlighted where applicable:

	Reporting Conditions
Required Filers	All registered management companies and ETFs organized as UITs (but not money market funds and SBICs)
Timing	Must be filed with the SEC within 30 days of the end of each month
Public Availability	Only information reported on Form N-PORT for the third month of a fund's fiscal quarter will be made publicly available within 60 days of the end of such fiscal quarter <i>In a change from the Proposing Release, certain limited information, as highlighted below, will be kept nonpublic for all N-PORT filings¹³</i>

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Information Required

Form N-PORT significantly expands the type of portfolio information that funds currently provide to the SEC and covers the following categories of data:

Disclosure Category	Required Disclosures
General Identifying Information	Name and Legal Entity Identifier (“LEI”) of the registrant and series; relevant file numbers (<i>i.e.</i> , CIK number or series identifier); fiscal year-end; reporting period ¹⁴
Assets and Liabilities	Total assets, total liabilities and net assets; aggregate value of “miscellaneous securities” held in portfolios; ¹⁵ assets invested in controlled foreign corporations; ¹⁶ borrowings attributable to amounts payable for notes, bonds, and similar debt; ¹⁷ payables for investments purchased (i) on a delayed delivery, when-delivered, or other firm commitment basis, or (ii) on a standby commitment basis; ¹⁸ liquidation preference of outstanding preferred stock issued by the fund ¹⁹
Portfolio Level Risk Metrics	<p>If the average value of the fund’s debt securities positions for the previous three months, in the aggregate, exceeds 25% of the fund’s net asset value:²⁰</p> <ul style="list-style-type: none"> • Duration: with respect to each currency to which the fund was exposed in amounts representing 1% or more of the fund’s net asset value, change in value of the fund’s portfolio as a whole resulting from a 1 basis point change in interest rates (sometimes referred to as DV01)²¹ and a 100 basis point change in interest rates (sometimes referred to as DV100)²² • Spread Duration: change in value of the fund’s portfolio as a whole resulting from a 1 basis point change in credit spreads (sometimes referred to as SDV01, CR01, or CS01)²³ <p><i>In a change from the Proposing Release, the SEC increased the reporting threshold from 20% to 25% of the fund’s net asset value and revised the calculation of the threshold to be based on the three-month average value of the fund’s debt securities positions as opposed to month-end²⁴</i></p>
Securities Lending Activities	Name of borrower; LEI of borrower (if any); aggregate value of all securities on loan to the borrower; ²⁵ whether the securities lending counterparty provided non-cash collateral, and if so (unless otherwise reported on Form N-PORT’s Schedule of Investments), for each category of non-cash collateral received for loaned securities:

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Disclosure Category	Required Disclosures
	(i) aggregate principal amount; (ii) aggregate value of collateral; and (iii) category of investments that most closely represents the collateral (<i>i.e.</i> , asset-backed securities; agency collateralized mortgage obligations; agency debentures and agency strips; agency mortgage-backed securities; U.S. Treasuries (including strips); other instrument) ²⁶
Monthly Return Information	<p>For each of the 3 preceding months:</p> <ul style="list-style-type: none"> • Monthly total returns for each share class²⁷ • Monthly net realized gain (or loss) and net change in unrealized appreciation (or depreciation) attributable to (i) derivatives for each of the following asset categories: commodity contracts, credit contracts, equity contracts, foreign exchange contracts, interest rate contracts, and other derivatives contracts, and (ii) the following types of derivative instruments: forward, future, option, swaption, swap, warrant, and other derivative²⁸ • Monthly net realized gain (or loss) and net change in unrealized appreciation (or depreciation) attributable to investments other than derivatives²⁹
Investor Flows	<p>Total net asset value of:</p> <ul style="list-style-type: none"> • Shares sold (including exchanges but excluding reinvestment of dividends and distributions)³⁰ • Shares sold in connection with reinvestments of dividends and distributions³¹ • Shares redeemed or repurchased (including exchanges)³² <p><i>In a change from the Proposing Release, if shares of a fund are held in omnibus accounts, for purposes of calculating the fund's sales, redemptions, and repurchases, the fund will be permitted to use net sales or redemptions/repurchases from such omnibus accounts</i></p>

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Disclosure Category	Required Disclosures
Schedule of Portfolio Investments – All Investments	<p>Identification of investments and issuers; investment amounts, including currency denomination;³³ payoff profile (<i>i.e.</i>, long, short, or not applicable); asset type;³⁴ issuer type;³⁵ country of investment or issuer;³⁶ whether the investment is a restricted security; whether the investment is categorized as a Level 1, Level 2, or Level 3 fair value measurement in the fair value hierarchy under U.S. generally accepted accounting principles (“GAAP”) or if, instead, the investment does not have a Level categorization associated with it</p> <p><i>In a change from the Proposing Release, certain information reported with respect to country of investment or issuer will be kept nonpublic for all Form N-PORT filings</i></p>
Schedule of Portfolio Investments – Debt Securities	<p>Maturity date; coupon; whether the security is currently in default; whether there are any interest payments in arrears or whether any coupon payments have been legally deferred by the issuer; whether any portion of the interest is paid in kind</p> <p><u>For convertible securities:</u> whether the conversion is mandatory or contingent; a description of the reference instrument; the conversion ratio; information about the asset into which the debt is convertible; and, if applicable, delta (<i>i.e.</i>, the ratio of the change in the value of the security to the change in the value of the asset into which it is convertible)</p> <p><i>In a change from the Proposing Release, any information reported with respect to a security’s delta will be kept nonpublic for all Form N-PORT filings</i></p>
Schedule of Portfolio Investments – Repurchase and Reverse Repurchase Agreements	<p>Transaction category (<i>i.e.</i>, repurchase or reverse repurchase); whether the transaction is cleared by a central counterparty; counterparty name and LEI (if any);³⁷ whether the agreement is tri-party; repurchase rate; maturity date; principal amount, value, and category³⁸ of investments comprising collateral</p>
Schedule of Portfolio Investments – Derivatives	<p>Type of derivative instrument that most closely represents the investment selected from among the following: forward, future, option, swaption, swap, warrant, other; counterparty name and LEI (if any)</p> <p><u>For options and warrants:</u> type (<i>i.e.</i>, put, call); payoff profile (<i>i.e.</i>, written, purchased); detailed description of reference instrument;³⁹ number of shares or principal amount of underlying reference instrument per contract; exercise price or rate; expiration date; delta; unrealized appreciation or depreciation⁴⁰</p>

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Disclosure Category	Required Disclosures
	<p><u>For futures and forwards (other than forward foreign currency contracts)</u>: payoff profile (<i>i.e.</i>, long, short); detailed description of reference instrument (same information as for options and warrants); expiration date; aggregate notional amount or contract value on trade date; unrealized appreciation or depreciation⁴¹</p> <p><u>For forward foreign currency contracts and foreign currency swaps</u>: amount and description of currency sold; amount and description of currency purchased; settlement date; unrealized appreciation or depreciation⁴²</p> <p><u>For swaps (other than foreign exchange swaps)</u>: description and terms of payments to be received from another party or to be paid to another party;⁴³ detailed description of reference instrument (same information as for options and warrants); termination or maturity date; upfront payments or receipts; notional amount; unrealized appreciation or depreciation⁴⁴</p> <p><u>For other derivatives</u>: description of the nature and terms of the investment;⁴⁵ detailed description of reference instrument (same information as for options and warrants); termination or maturity (if any); notional amount(s); delta (if applicable); unrealized appreciation or depreciation⁴⁶</p> <p><i>In a change from the Proposing Release, any information reported with respect to a security's delta will be kept nonpublic for all Form N-PORT filings</i></p>
<p>Schedule of Portfolio Investments – Securities Lending</p>	<p>With respect to each investment in a fund's portfolio:⁴⁷</p> <ul style="list-style-type: none"> • whether any amount of the investment represents reinvestment of cash collateral received for loaned securities and, if so, the value of the investment representing cash collateral • whether any portion of the investment represents non-cash collateral that is treated as a fund asset and received for loaned securities and, if so, the value of the securities representing non-cash collateral • whether any portion of the investment is on loan and, if so, the value of the securities on loan

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Miscellaneous Securities. As noted above, Form N-PORT will permit funds to identify certain investments as “miscellaneous securities.” Part D of the Form will require a fund to provide the same detail about its miscellaneous securities as it provides with respect to its non-miscellaneous securities in Part C. Information about miscellaneous securities will be nonpublic and provided for SEC use only.⁴⁸

Explanatory Notes. Part E of Form N-PORT will permit, but not require, funds to provide explanatory notes about a filing. The SEC indicated that the notes section “could be used to explain assumptions” and/or “provide context for seemingly anomalous responses.”⁴⁹ Explanatory notes related to delta, country of risk and economic exposure, and miscellaneous securities that are identifiable to any particular fund or adviser will be nonpublic and provided for SEC use only.⁵⁰

Exhibits. In adopting Form N-PORT, the SEC recognized that the structured data provided in Part C would not be useful for most individual investors. Thus, Part F of Form N-PORT will require a fund to attach, no later than 60 days after the end of the reporting period, to the fund’s reports for the end of the first and third quarters of the fiscal year a schedule of portfolio holdings prepared in a non-structured data format and presented in accordance with Regulation S-X. Part F is intended to replicate the form and content of information prepared on Form N-Q, which the SEC rescinded.⁵¹

AMENDMENTS TO REGULATION S-X

Regulation S-X prescribes the form and content of financial statements required in a fund’s registration statement and shareholder reports. The adopted amendments to Regulation S-X are designed, among other things, to conform certain disclosures required in a fund’s financial statements with those required by Form N-PORT and are largely focused on enhancing the transparency of a fund’s derivatives portfolio while increasing the usefulness of the disclosures to investors. The amendments were adopted largely as proposed with certain noteworthy modifications, as described below.

Enhanced Derivative Disclosures

Currently, Regulation S-X contains general requirements for portfolio holdings disclosures but does not require standardized disclosures about derivatives other than options. To address this information gap, the adopted amendments will, among other things, require uniform disclosures about open futures contracts, open forward foreign currency contracts, and open swap contracts. The amendments will also modify current disclosure requirements for purchased and written options and will update the form and content of certain other financial statement components.

Open Futures Contracts. Under current Rule 12-13, a fund is only required to provide a description of open futures contracts (including expiration date), the number of contracts held, and any unrealized appreciation and depreciation. New Rule 12-13A will require a fund to disclose the following information, with respect to each open futures contract: (1) description; (2) number of contracts; (3) expiration date; (4) notional amount;⁵² (5) value;⁵³ and (6) any unrealized appreciation or depreciation.⁵⁴

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Open Forward Foreign Currency Contracts. Under current Rule 12-13, a fund is required to report a description of its open currency forwards (including a description of what is to be purchased and sold and the settlement date), the amount to be purchased and sold on the settlement date, and any unrealized appreciation or depreciation. Under new Rule 12-13B, a fund holding open forward foreign currency contracts will be required to disclose the following information with respect to each such contract: (1) amount and description of currency to be purchased; (2) amount and description of currency to be sold; (3) counterparty; (4) settlement date; and (5) any unrealized appreciation or depreciation.⁵⁵ In the Adopting Release, the SEC encouraged the presentation of unrealized appreciation and unrealized depreciation in two separate columns to the extent it would assist funds in reconciling these amounts to corresponding figures on its balance sheet.⁵⁶

Open Swap Contracts. With respect to swaps, current Rule 12-13 requires a fund to report a description of the contract (including a description of what is to be paid and received by the fund and the contract's maturity date), notional amount, and any unrealized appreciation or depreciation. New Rule 12-13C will require a fund to disclose the following information with respect to each open swap: (1) description and the terms of payments to be received from another party; (2) description and the terms of payments to be paid to another party; (3) counterparty;⁵⁷ (4) maturity date; (5) notional amount; (6) value; (7) any upfront payments or receipts; and (8) any unrealized appreciation or depreciation.⁵⁸ Under new Rule 12-13C, in the case of a swap contract with a reference asset that is an index or basket of investments for which the components are publicly available on a website as of the balance sheet date or if the notional amount of the holding does not exceed one percent of a fund's net asset value as of the close of the period, the fund will be required to include information sufficient to identify the referenced asset, such as a description.⁵⁹ However, in a modification from the proposed rule, if the components are not publicly available on a website as of the balance sheet date and the notional amount of the derivative exceeds one percent of the fund's net asset value as of the close of the period, a fund will be permitted to describe the index or custom basket and list separately: (i) the 50 largest components of the index or custom basket and (ii) any other components where the notional value for that component exceeds one percent of the notional value of the index or custom basket.⁶⁰

Open Options Contracts Written and Purchased. Under current Rule 12-12B, funds are required to report, for open option contracts, the name of the issuer, number of contracts, exercise price, expiration date, and value. New Rule 12-13, which will replace current Rule 12-12B, will require a fund to disclose the following information for each written and purchased option: (1) description; (2) counterparty; (3) number of contracts; (4) notional amount;⁶¹ (5) exercise price; (6) expiration date; and (7) value.⁶²

Other Investments. Current Rule 12-13 will be renumbered as new Rule 12-13D, but will continue to be the schedule by which funds report investments not otherwise required to be reported elsewhere under Regulation S-X's portfolio disclosure rules. The SEC expects that a fund "will report, among other holdings, investments in physical holdings, such as real estate or commodities, pursuant to [R]ule 12-13D."⁶³ New Rule 12-13D will require a fund to disclose the following information with respect to each identified investment: (1) description; (2) balance held at close of period; and (3) the

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value at close of period.⁶⁴ A fund will also be required to disclose whether the investment was restricted and whether its value was determined using unobservable inputs.⁶⁵

Amendments to Rule 12-12

The SEC originally proposed a number of changes to the instructions to Rule 12-12 that would have required a fund to, among other things, categorize its portfolio schedule by type of investment, related industry, *and* related country or geographic region. In the Adopting Release, the SEC noted that requiring categorization of both the industry and geographic region would add unnecessary length and confusion to the schedule of investments and declined to adopt these requirements.⁶⁶ Accordingly, Rule 12-12, as amended, will require a fund to categorize its portfolio schedule by type of investment *and* by related industry, country, or geographic region.⁶⁷

Amended instructions to Rule 12-12 will also require a fund to indicate the interest rate or preferential dividend rate and maturity rate for certain enumerated debt instruments and, with respect to variable rate securities, the referenced rate and spread and the end-of-period interest rate of each referenced rate at the end of the period.⁶⁸ In addition, the revised instructions will also require a fund to provide, with respect to each security with payments-in-kind, the rate paid in-kind and to disclose investments whose value was determined using significant unobservable inputs.⁶⁹

Investments in and Advances to Affiliates

The SEC amended Rule 12-14 to require a fund to disclose realized gains or losses and changes in unrealized appreciation or depreciation for each investment in and advance to an affiliate or a company in which the fund owns 5% or more of the outstanding voting securities.⁷⁰

Form and Content of Financial Statements

The SEC adopted various revisions to Article 6 of Regulation S-X, which prescribes the form and content of financial statements filed for funds. The amendments are intended to improve usability and the consistency of disclosures across financial statements and schedules.

In recognition of the fact that investments reported under proposed Rules 12-13A through 12-13D could be presented under both assets and liabilities on the balance sheet, the SEC rescinded current rule 6-04.4, which requires disclosure of “Total investments” on a fund’s balance sheet under “Assets.”⁷¹ For example, a fund may hold a forward foreign currency contract with unrealized appreciation and a different forward foreign currency contract with unrealized depreciation. If the fund were to present an asset balance for the contract with unrealized appreciation and a liability balance for the contract with unrealized depreciation, totaling the investments reported under “Assets” could be misleading.

In addition, Rule 6-07.7(a) was revised to conform the statement of operations disclosures of the net realized gains or losses from investments to include the additional derivatives disclosures in proposed rules 12-13A through 12-13C.⁷²

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Similarly, Rule 6-07.7(d) was amended to conform the disclosure of the net increase or decrease in unrealized appreciation or depreciation of investments to include the additional derivatives change in unrealized appreciation and depreciation disclosures required by the new derivatives schedules.⁷³

The SEC had originally proposed new Rule 6-03(m), which would have required a fund to make certain disclosures in connection with its securities lending activities and cash collateral management. In response to commenters' concerns, however, the SEC reasoned that it would be more appropriate to require these disclosures in a fund's Statement of Additional Information (or, for closed-end funds, reports on Form N-CSR), rather than to require their inclusion in the fund's financial statements.⁷⁴ Accordingly, the Reporting Modernization Rules also include amendments to those forms that will require funds to disclose, in a new table, dollar amounts of income and fees and compensation paid to service providers related to their securities lending activities during their most recent fiscal year.⁷⁵

FORM N-CEN

Currently, most registered funds are required to report census-type information to the SEC on Form N-SAR about their organization, service providers, fees and expenses, portfolio strategies and investments, portfolio transactions, and share transactions. The SEC believes that the information required under Form N-SAR has become increasingly less useful, particularly since the form has not been revised in two decades. Thus, the SEC will be replacing Form N-SAR with Form N-CEN to streamline and update the quality and utility of the census information funds provide. Funds will be required to complete Form N-CEN in a structured XML data format, which, like Form N-PORT, is expected to assist the SEC in aggregating, extracting, and analyzing fund-specific and overall industry trends.⁷⁶

The following chart summarizes the key reporting requirements under Form N-CEN compared with the current reporting requirements under Form N-SAR:⁷⁷

	N-SAR	N-CEN
Required Filers	All registered investment companies, except face amount certificate companies	All registered investment companies, except face amount certificate companies
Reporting Period	Generally, semi-annual report ⁷⁸	Annual report
Deadline	60 days after the end of the applicable fiscal period for registered management investment companies and not later than 60 days after the close of the calendar year for UITs	75 days after the end of the applicable fiscal year for registered management investment companies and not later than 75 days after the close of the calendar year for UITs

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Information Required

The chart below summarizes certain information that will be required by Form N-CEN, *focusing on the information that is not currently required to be reported on Form N-SAR*. This information is categorized according to the applicable section of Form N-CEN.

All funds will be required to complete Parts A and B, along with any attachments on Part G. Part C will be completed by all registered management investment companies, other than SBICs. Part D will be completed by closed-end funds and SBICs. Part E will be completed by all ETFs, including ETFs that are UITs. Finally, Part F will be completed by all UITs.

N-CEN Section	New Information Required by Form N-CEN
Part A: General Information	<ul style="list-style-type: none"> • Reporting period covered⁷⁹ • Whether the report covers a period of less than 12 months⁸⁰
Part B: Information About the Registrant	<ul style="list-style-type: none"> • Name⁸¹ • Investment Company Act file number⁸² • CIK number and LEI⁸³ • Address, telephone number and public website (if any)⁸⁴ • Location of the fund’s books and records⁸⁵ • Whether the registrant issues a class of securities registered under the Securities Act of 1933 (the “Securities Act”)⁸⁶ • Whether each director is an “interested person” of the fund and the Investment Company Act file number for any other registered investment company for which the person also serves as a director⁸⁷ • Identifying information about the chief compliance officer (“CCO”) and any person other than the registrant, or an affiliated person of the registrant, if any, who compensates or employs the CCO for providing CCO services⁸⁸ • The nature and extent to which a fund receives financial support from its sponsor and/or affiliates⁸⁹

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N-CEN Section	New Information Required by Form N-CEN
	<ul style="list-style-type: none"> • Whether during the reporting period the fund relied on exemptive orders under the Investment Company Act, the Securities Act, or the Securities Exchange Act of 1934⁹⁰ • Whether an independent public auditor issued an unqualified opinion during the reporting period⁹¹ • Information regarding dividends or distributions to shareholders⁹²
Part C: Additional Questions for Management Investment Companies⁹³	<ul style="list-style-type: none"> • Information on the classes of shares authorized and outstanding⁹⁴ • Type of fund⁹⁵ • For index funds: whether the index is constructed by an affiliated person; whether the index is exclusively for the fund; and the fund’s “tracking difference” and “tracking error”⁹⁶ • Whether the fund seeks to operate as a non-diversified company⁹⁷ • Investments in controlled foreign corporations⁹⁸ • Detailed information about securities lending activity⁹⁹ • Identifying information about current and former third-party pricing services¹⁰⁰
Part D: Additional Questions for Closed-End Management Investment Companies and Small Business Investment Companies	<ul style="list-style-type: none"> • Information about rights offerings¹⁰¹ • Information about secondary offerings¹⁰² • Whether securities were repurchased during the reporting period¹⁰³ • Net annual operating expenses as a percentage of net assets¹⁰⁴
Part E: Additional Questions for Exchange-Traded Funds and Exchange-Traded Managed Funds	<ul style="list-style-type: none"> • Exchange where listed¹⁰⁵ • Identifying information about authorized participants¹⁰⁶ • Information about creation units¹⁰⁷

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N-CEN Section	New Information Required by Form N-CEN
	<ul style="list-style-type: none"> • For exchange-traded funds that are unit investment trusts: whether the index is constructed by an affiliated person; whether the index is exclusively for the fund; and the fund’s tracking difference and tracking error¹⁰⁸ <p><i>In a change from the Proposing Release, the required information concerning creation units was expanded to include summary information about certain characteristics of creation units, primary market transactions, and transaction fees.¹⁰⁹</i></p>
<p>Part F: Additional Questions for Unit Investment Trusts</p>	<ul style="list-style-type: none"> • For a unit investment trust that is a separate account of an insurance company: <ul style="list-style-type: none"> ○ Series identification number¹¹⁰ ○ For each security with a contract identification number, the number of individual contracts that are in force at the end of the reporting period¹¹¹ ○ Identifying information for each security issued through the separate account¹¹² ○ Information relating to section 1035 exchanges¹¹³ ○ Reliance on rule 6c-7¹¹⁴ ○ Reliance on rule 11a-2¹¹⁵

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If you have any questions regarding this memorandum, please contact Rose F. DiMartino (212-728-8215; rdimartino@willkie.com), Jay Spinola (212-728-8970; jspinola@willkie.com), Justin L. Browder (202-303-1264; jbrowder@willkie.com), Arthur Damoulakis (202-303-1177; adamoulakis@willkie.com) or the Willkie attorney with whom you regularly work.

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November 8, 2016

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- ¹ See Investment Company Reporting Modernization, Inv. Co. Act Rel. No. 32314 (Oct. 13, 2016), available [here](#).
 - ² See Adopting Release, at 10-12. The Reporting Modernization Rules do not apply to face-amount certificate companies.
 - ³ See Investment Company Reporting Modernization, Inv. Co. Act Rel. No. 31610 (May 20, 2015), available [here](#). A copy of our client memorandum on the initial proposal is available [here](#).
 - ⁴ See Adopting Release, at 9-11.
 - ⁵ See Form ADV and Investment Advisers Act Rules, Inv. Adv. Act Rel. No. 4509 (Aug. 25, 2016); Money Market Fund Reform, Inv. Co. Act Rel. No. 29132 (Feb. 23, 2010); Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Inv. Adv. Act Rel. No. 3308 (Oct. 31, 2011); Money Market Fund Reform; Amendments to Form PF, Inv. Co. Act Rel. No. 31166 (July 23, 2014).
 - ⁶ See Adopting Release, at 310-11.
 - ⁷ See Chair Mary Jo White, *Statement at Open Meeting: Modernizing and Enhancing Investment Company and Investment Adviser Reporting* (Oct. 13, 2016), available [here](#). Commissioner Piwowar went a step further and stated that, if necessary, he would delay the Public Company Accounting Oversight Board budget hearing and any other non-essential items until a final Rule 30e-3 rulemaking is complete. See Commissioner Michael S. Piwowar, *Statement at Open Meeting: Investment Company Liquidity Risk Management Programs, Investment Company Swing Pricing, and Investment Company Reporting Modernization Releases* (Oct. 13, 2016), available [here](#).

WILLKIE FARR & GALLAGHER_{LLP}

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- ⁸ Willkie Farr & Gallagher LLP, “New SEC Rule Requires Open-End Funds to Have Formal Liquidity Risk Management Programs; ‘Swing Pricing’ Permitted But Not Required”, Client Memo (Nov. 8, 2016), available [here](#).
- ⁹ The term “group of related investment companies” is defined as two or more management companies (including series thereof) that: (i) hold themselves out to investors as related companies for purposes of investment and investor services; and (ii) either: (A) have a common investment adviser or have investment advisers that are affiliated persons of each other; or (B) have a common administrator. In the case of a UIT, the term means “two or more unit investment trusts (including series thereof) that have a common sponsor.” See Rule 0-10 under the Investment Company Act.
- ¹⁰ See Adopting Release, at 17-18.
- ¹¹ See Rule 30b1-5 under the Investment Company Act.
- ¹² See Rule 30b2-1 under the Investment Company Act.
- ¹³ See Adopting Release, at 359. Form N-PORT, Instruction F.
- ¹⁴ The LEI initiative is sponsored by the Global Financial Markets Association (the “GFMA”) and is intended to allow for consistent identification of parties to financial transactions throughout the world. Global Financial Markets Association, Legal Entity Identifier, available [here](#). The LEI system operates under the LEI Regulatory Oversight Committee of which the SEC is a member.
- ¹⁵ See Form N-PORT, Item B.2.a. Form N-PORT is reprinted in its entirety in the Adopting Release starting at page 582. Under Rule 12-12 of Regulation S-X, funds are permitted to report an aggregate amount not exceeding five percent of the total value of the portfolio investments in one amount as “miscellaneous securities,” provided that such securities 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 the shareholders, or set forth in any registration statement, application, or annual report or otherwise made available to the public.
- ¹⁶ See Form N-PORT, Item B.2.b.
- ¹⁷ See Form N-PORT, Item B.2.c.
- ¹⁸ See Form N-PORT, Item B.2.d.
- ¹⁹ See Form N-PORT, Item B.2.e.
- ²⁰ As adopted, average value of debt securities positions would equal the sum of the absolute values of: (i) the value of each debt security; (ii) the notional value 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; (iii) the notional value of each futures contract for which the underlying reference asset or assets are debt securities or an interest rate; and (iv) the delta-adjusted notional value of any option for which the underlying reference asset is an asset described in clause (i),(ii), or (iii). See Form N-PORT, Item B.3.
- ²¹ See Form N-PORT, Item B.3.a. Interest rate risk must be provided for each currency to which the fund is exposed and for maturities of 3 months, 1 year, 5 years, 10 years, and 30 years.
- ²² See Form N-PORT, Item B.3.b. Interest rate risk must be provided for each currency to which the fund is exposed and for maturities of 3 months, 1 year, 5 years, 10 years, and 30 years.

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- ²³ See Form N-PORT, Item B.3.c. Credit rate risk information must be provided for investment grade and non-investment grade exposures and for maturities of 3 months, 1 year, 5 years, 10 years, and 30 years. In response to comments, the SEC removed the proposed definition of “investment grade” to permit funds to rely on their existing practices and methodologies in determining what constitutes investment grade. See Adopting Release, at 37-38.
- ²⁴ See Adopting Release, at 49-50.
- ²⁵ See Form N-PORT, Item B.4.a. In addition, Form N-CEN (discussed below) will require a fund to disclose, on an annual basis, the name and other identifying information of the fund’s securities lending agent, and revisions to Regulation S-X (also discussed below) will require a fund to disclose in its financial statements certain information about the income from and fees paid in connection with securities lending activities as well as the monthly average of the value of portfolio securities on loan. Currently, funds generally disclose: whether they are permitted to engage in securities lending activities and whether they did so during the reporting period (Item 70.N of Form N-SAR); investment strategies (Item 16(b) of Form N-1A) and risks (Items 9(c) and 16(b) of Form N-1A); and particular securities that are on loan in their schedules of portfolio investments (Regulation S-X). The Adopting Release noted that many commenters recommended limiting the collection of securities lending information to the top 5 or 10 securities lending borrowers presenting the greatest exposure. See Adopting Release, at 69-70. The SEC declined to limit the required securities lending information, citing that providing such information, in its opinion, would not be unduly burdensome or costly, as a fund would need to collect this information both to understand its own counterparty risk and for its own oversight of securities lending. *Id.*
- ²⁶ See Form N-PORT, Item B.4.b.
- ²⁷ See Form N-PORT, Item B.5.a. Funds with multiple classes would report returns for each class. Funds would calculate returns using the same standardized formulas required for calculation of returns in the performance table contained in the risk-return summary of the fund’s prospectus and in fund sales materials. See Form N-1A, Item 26(b)(1); Form N-2, Item 4, Instruction 13; Form N-3, Item 26(b)(i).
- ²⁸ See Form N-PORT, Item B.5.c.
- ²⁹ See Form N-PORT, Item B.5.d.
- ³⁰ See Form N-PORT, Item B.6.a.
- ³¹ See Form N-PORT, Item B.6.b.
- ³² See Form N-PORT, Item B.6.c.
- ³³ See Form N-PORT, Item C.2. For each investment, in addition to the currency in which the investment is denominated, a fund would be required to disclose the balance of the investment (e.g., number of shares or principal amount), the investment value denominated in U.S. dollars, and the percentage of the fund’s net asset value comprised of the investment. See *id.*
- ³⁴ See Form N-PORT, Item C.4.a. For asset type, the categories would include “short-term investment vehicle (e.g., money market fund, liquidity pool, or other cash management vehicle), repurchase agreement, equity-common, equity-preferred, debt, derivative-commodity, derivative-credit, derivative-equity, derivative-foreign exchange, derivative-interest rate, derivatives-other, structured note, loan, ABS-mortgage backed security, ABS-asset backed commercial paper, ABS-collateralized bond/debt obligation, ABS-other, commodity, real estate, [and] other.” See Form N-PORT, Item C.4.a.

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- ³⁵ See Form N-PORT, Item C.4.b. For issuer type, the categories would include: “corporate, U.S. Treasury, U.S. government agency, U.S. government sponsored entity, municipal, non-U.S. sovereign, private fund, registered fund, [and] other.” See Form N-PORT, Item C.4.b.
- ³⁶ See Form N-PORT, Item C.5.
- ³⁷ See Form N-PORT, Item C.10.b. If the agreement is cleared by a central counterparty, the fund must provide the name of the central counterparty. If the agreement is entered into over the counter, the fund must provide the LEI (if any) of the counterparty. See Form N-PORT, Item C.10.b.
- ³⁸ See Form N-PORT, Item C.10.f.iii. Investment 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. See *id.*
- ³⁹ See Form N-PORT, Items C.11.c.i-iii. The following information is required based on the characteristics of the reference instrument:
- i. If the reference instrument is an index or custom basket for which the components are publicly available on a website and are updated on that website no less frequently than quarterly, the fund would identify the index and provide the index identifier, if any.
 - ii. If the index’s or custom basket’s components are not publicly available and the notional amount of the derivative represents 1% or less of the NAV of the fund, the fund would provide a narrative description of the index.
 - iii. If the index’s or custom basket’s components are not publicly available, and the notional amount of the derivative represents more than 5% of the net asset value of the fund, the fund would provide the name, identifier, number of shares or notional amount or contract value as of the trade date, and value of every component in the index or custom basket.
 - iv. If the index’s or custom basket’s components are not publicly available, and the notional amount of the derivative represents greater than 1%, but 5% or less, of the net asset value of the fund, the fund would provide the required component information described above in (iii), but may limit reporting to the 50 largest components in the index and any other components where the notional value for that component is over 1% of the notional value of the index or custom basket.
 - v. If the reference instrument is a derivative, funds would indicate the category of derivative (*e.g.*, swap) and would provide all information required to be reported on Form N-PORT for that type of derivative.
- ⁴⁰ See Form N-PORT, Item C.11.c.viii.
- ⁴¹ See Form N-PORT, Item C.11.d.
- ⁴² See Form N-PORT, Item C.11.e.
- ⁴³ See Form N-PORT, Item C.11.f.i. Description provisions include a description of the reference instrument, obligation or index; financing rate; floating coupon rate; fixed coupon rate; and payment frequency.
- ⁴⁴ See Form N-PORT, Item C.11.f.
- ⁴⁵ See Form N-PORT, Item C.11.g.i. Descriptive terms include currency, payment terms, payment rates, call or put feature, exercise price, and description of reference instrument.

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⁴⁶ See Form N-PORT, Item C.11.g.

⁴⁷ See Form N-PORT, Item C.12.

⁴⁸ See Form N-PORT, Part D.

⁴⁹ See Adopting Release, at 134.

⁵⁰ See Form N-PORT, Instruction F.

⁵¹ See Adopting Release, at 135-36.

⁵² Notional amount shall be the current notional amount at close of period. See Rule 12-13A of Regulation S-X at n.6.

⁵³ In the Adopting Release, the SEC noted that Section 2(a)(41) of the Investment Company Act currently contains a definition of “value” that is applicable to Regulation S-X. See Adopting Release, at 177.

⁵⁴ See Adopting Release, at 176-77; Rule 12-13A of Regulation S-X.

⁵⁵ See Adopting Release, at 178; Rule 12-13B of Regulation S-X.

⁵⁶ See Adopting Release, at 179-80.

⁵⁷ Not required for exchange-traded or centrally cleared swaps. See Rule 12-13C of Regulation S-X, at n.4.

⁵⁸ See Adopting Release, at 180-85; Rule 12-13C of Regulation S-X.

⁵⁹ See Adopting Release, at 183-84; Rule 12-13C of Regulation S-X, at n.3.

⁶⁰ See *id.*

⁶¹ The SEC did not provide a prescriptive formula for calculating the notional amount since the SEC wanted to permit registered investment companies to use their current methods and other reasonable methods to determine notional amounts of derivative transactions. See Adopting Release, at 167-68.

⁶² See Adopting Release, at 166-67; Rule 12-13 of Regulation S-X. In the case of an option contract with an underlying investment that is an index or basket of investments for which the components are publicly available on a website as of the balance sheet date or if the notional amount of the option contract does not exceed one percent of the net asset value of the registrant as of the close of the period, a fund should include the description of the underlying investment as part of the description of the option. In the event that the components are not publicly available on a website as of the balance sheet date and the notional amount of the option contract exceeds one percent of the net asset value of the registrant as of the close of the period, the SEC modified the proposed amendment to allow a fund to describe the index or custom basket and list separately: (i) the 50 largest components in the index or custom basket and (ii) any other components where the notional value for that component exceeds 1% of the notional value of the index or custom basket. See Adopting Release, at 170-75; Rule 12-13 of Regulation S-X, at n.3.

⁶³ See Adopting Release, at 186.

⁶⁴ See Adopting Release, at 186-87; Rule 12-13D of Regulation S-X.

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⁶⁵ See Rule 12-13D of Regulation S-X, at nn.6-7.

⁶⁶ See Adopting Release, at 187-88.

⁶⁷ See Adopting Release, at 187-88; Rule 12-12 of Regulation S-X, at n.2. The SEC noted that since it decided to not adopt the proposed instructions, which would have required funds to categorize investments by both industry and geographic regions, it did not include a specific instruction on how a fund should report geographic concentrations or treat the disclosure as nonpublic. However, the SEC noted that GAAP requires disclosure of significant concentrations of credit risk. See Adopting Release, at 188-89.

⁶⁸ See Adopting Release, at 190; Rule 12-12 of Regulation S-X, at n.4.

⁶⁹ See Adopting Release, at 189-93; Rule 12-12 of Regulation S-X, at nn.4 and 9. The final rule amendments only refer to “value” and not “fair value” (as was proposed) to make “value” consistent with current Article 12. See Adopting Release, at 193.

⁷⁰ See Adopting Release, at 198-99; columns C and D of Rule 12-14 of Regulation S-X.

⁷¹ See Adopting Release, at 203.

⁷² See Adopting Release, at 207-08.

⁷³ See Adopting Release, at 208; Rule 6-07.7(c) of Regulation S-X.

⁷⁴ See Adopting Release, at 205.

⁷⁵ See Adopting Release, at 315-16.

⁷⁶ See Adopting Release, at 210-13.

⁷⁷ Form N-CEN is reprinted in its entirety in the Adopting Release starting at page 535.

⁷⁸ Unit investment trusts file N-SAR annually. See 17 C.F.R. § 270.30a-1. A fund must file a transition report on Form N-SAR when a fund’s fiscal year changes. See 17 C.F.R. § 270.30b1-1.

⁷⁹ See Form N-CEN, Item A.1.a.

⁸⁰ See Form N-CEN, Item A.1.b.

⁸¹ See Form N-CEN, Item B.1.a.

⁸² See Form N-CEN, Item B.1.b.

⁸³ See Form N-CEN, Items B.1.c-d.

⁸⁴ See Form N-CEN, Item B.2.

⁸⁵ See Form N-CEN, Item B.3.

⁸⁶ See Form N-CEN, Item B.7.

⁸⁷ See Form N-CEN, Items B.8.c-d.

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⁸⁸ See Form N-CEN, Item B.9.

⁸⁹ See Form N-CEN, Item B.14. The term “financial support” means (1) capital contribution, (2) purchase of a security from a money market fund in reliance on Rule 17a-9 under the Investment Company Act, (3) purchase of any defaulted or devalued security at fair value reasonably intended to increase or stabilize the value or liquidity of the fund’s portfolio, (4) execution of letter of credit or letter of indemnity, (5) capital support agreement (whether or not the fund ultimately received support), (6) performance guarantee, or (7) other similar action reasonably intended to increase or stabilize the value or liquidity of the fund’s portfolio. Provision of financial support does not include any (1) routine waiver of fees or reimbursement of fund’s expenses, (2) routine inter-fund lending, (3) routine inter-fund purchases of fund’s shares, or (4) action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the fund’s portfolio.

⁹⁰ See Form N-CEN, Item B.15.

⁹¹ See Form N-CEN, Item B.19.

⁹² See Form N-CEN, Items B.22-23.

⁹³ All management companies (other than small business companies) must complete Part C.

⁹⁴ Form N-CEN requires open-end management companies to report the number of classes authorized, added, and terminated during the reporting period. Form N-CEN, Items C.2.a-c. Open-end management companies would also report identifying information for each class with shares outstanding, including the name of the class, any class identification number, and any ticker symbol. See Form N-CEN, Item C.2.d.

⁹⁵ Fund types include: exchange-traded fund or exchange-traded managed fund; index fund; fund seeking to achieve performance results that are a multiple of an index or other benchmark, the inverse of an index or other benchmark, or a multiple of the inverse of an index or other benchmark; interval fund; fund of funds; master-feeder fund; money market fund; target date fund; and underlying fund to a variable annuity or variable life insurance contract. See Form N-CEN, Item C.3.

⁹⁶ See Form N-CEN, Item C.3.b. “Tracking difference” is “the return difference between the fund and the index it is following, annualized.” See Adopting Release, at 246, n.920, and accompanying text. “Tracking error” is “the standard deviation of the daily difference in return between the fund and the index it is following, annualized.” See *id.*, at 246, n.921, and accompanying text.

⁹⁷ See Form N-CEN, Item C.4. By contrast, Form N-SAR asks whether the fund was a diversified investment company at any time during the reporting period. See Form N-SAR, Item 60.

⁹⁸ See Form N-CEN, Item C.5.

⁹⁹ This information includes identification of securities lending agents or cash collateral managers used, fees paid, and affiliation of lending agents and collateral managers to the fund’s adviser, information about borrower defaults, whether the fund (or its securities lending agent) liquidated collateral pledged to secure the loaned securities and whether the fund exercised its indemnification rights during the reporting period. See Form N-CEN, Item C.6.

¹⁰⁰ See Form N-CEN, Item C.11.

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¹⁰¹ See Form N-CEN, Item D.2.

¹⁰² See Form N-CEN, Item D.3.

¹⁰³ Form N-CEN only requires a fund to indicate if it repurchased any outstanding securities and the types of securities repurchased. Form N-CEN, Item D.4. Form N-PORT, on the other hand, requires a fund to provide the aggregate dollar amounts for sales and redemptions/repurchases of fund shares during each of the preceding three months. See Form N-PORT, Item B.6.

¹⁰⁴ See Form N-CEN, Item D.9.

¹⁰⁵ See Form N-CEN, Item E.1.

¹⁰⁶ Authorized participant information includes: the name of each of its authorized participants and certain other identifying information, the dollar value of shares that each authorized participant purchased and redeemed from the exchange-traded fund during the reporting period, and whether the fund requires an authorized participant to post collateral to the fund or any of its designated service providers in connection with the purchase or redemption of fund shares. See Form N-CEN, Item E.2.

¹⁰⁷ See Form N-CEN, Item E.3.

¹⁰⁸ See Form N-CEN, Item E.4.

¹⁰⁹ Creation unit information includes, among other things, the number of exchange-traded fund shares required to form a creation unit as of the last business day of the reporting period and, based on the dollar value paid for each creation unit purchased and redeemed by authorized participants during the reporting period, the average percentage of that value composed of cash, the standard deviation of the percentage of that value composed of cash, the average percentage of that value composed of non-cash assets and other positions exchanged on an "in-kind" basis, and the standard deviation of the percentage of that value composed of non-cash assets and other positions exchanged on an "in-kind" basis. See Form N-CEN, Item E.3.

¹¹⁰ See Form N-CEN, Item F.12.

¹¹¹ See Form N-CEN, Item F.13.

¹¹² Information about a security issued through a separate account would include the name of the security, contract identification number, total assets attributable to the security, number of contracts sold, gross premiums received, and amount of contract value redeemed. See Form N-CEN, Items F.14.a-e, and h.

¹¹³ Information about 1035 exchanges would include gross premiums received pursuant to section 1035 exchanges, number of contracts affected in connection with premiums paid, amount of contract value redeemed pursuant to section 1035 exchanges, and number of contracts affected by redemptions. See Form N-CEN, Items F.14.f, g, i, and j.

¹¹⁴ See Form N-CEN, Item F.15.

¹¹⁵ See Form N-CEN, Item F.16.