

The Investment Lawyer

Covering Legal and Regulatory Issues of Asset Management

VOL. 24, NO. 3 • MARCH 2017

Changes to Investment Company Reporting—A Look at New Form N-CEN and Amended Regulation S-X: Part 2 of 2

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On October 13, 2016, the US Securities and Exchange Commission (SEC) adopted sweeping changes to investment company reporting obligations under the Investment Company Act of 1940, as amended (1940 Act) (Reporting Rules).¹ In last month's issue we examined new Form N-PORT, which requires monthly reporting of a fund's portfolio holdings and certain risk metrics, along with extensive other data. More broadly, we considered the possible uses of the new information by the SEC Staff and other uncertainties for funds, their investment advisers and others created by the Reporting Rules, as well as possible steps for preparation for the Reporting Rules.

In this article we look at (1) new Form N-CEN, an annual form requiring census-type information that will replace current semi-annual filings of Form N-SAR; (2) amendments to Regulation S-X to, among other things, standardize funds' derivatives disclosures; and (3) amendments to certain SEC forms to require more information regarding funds' securities lending activities. While these changes do not represent the seismic shift to fund reporting represented by Form N-PORT, they nonetheless raise many of the same concerns outlined in

our previous article, in particular the implications of Form N-CEN reporting on SEC Staff monitoring and examination efforts. Following an overview of Form N-CEN and amended Regulation S-X, we highlight certain new or revised disclosure items that may present potential areas of SEC Staff focus or which may create the need for advance consideration by fund advisers. The article closes with a more detailed review of the requirements of Form N-CEN, amended Regulation S-X, and other form changes.

Overview

New Form N-CEN replaces Form N-SAR (adopted in 1985 and outdated in its current form) as the form on which all registered investment companies, other than face-amount certificate companies, must report certain census-type information. While Form N-CEN retains many of the disclosure items currently required by Form N-SAR, the new form substantially updates and augments reported information. Form N-CEN must be submitted in extensible markup language (XML), a structured data format that will increase the transparency of submitted data, permitting the SEC and third parties to efficiently collect, aggregate and analyze submitted information.

New or augmented items required by Form N-CEN include, notably:

- Detailed information on securities lending transactions, securities lending agents and cash-collateral managers, types of payments to such agents, and indemnification arrangements;
- Information on financial support received from certain affiliated entities;
- Information specific to exchange-traded funds (ETFs) and exchange traded managed funds (ETMFs), including identifying and other information on each authorized participant (AP) and information on the purchase and redemption of creation units;
- Additional information on unit investment trusts (UITs) that are investment company separate accounts;
- Additional information on closed-end funds and small business investment companies (SBICs), including information relating to rights offerings and secondary offerings;
- In addition to the information currently required by Form N-SAR regarding a material change in valuation methodologies, identification of the asset type and type of investment involved;
- Whether any net asset value (NAV) error resulted in payments to shareholders or reprocessing of shareholder accounts;
- Information on the availability and use of lines of credit, and inter-fund borrowing and lending (Lending/Borrowing Information);² and
- If applicable, a fund’s swing factor upper limit and whether the fund engaged in swing pricing during the reporting period (Swing Pricing Information).³

Amendments to Regulation S-X mandate, among other changes, enhanced, standardized and more prominent derivatives disclosure in the financial statements included in funds’ registration statements and shareholder reports. As amended, Regulation S-X requires funds to provide detailed information on holdings in open futures contracts, open forward

foreign-currency contracts, and open swap contracts, as well as to provide additional disclosure on written and purchased options. The amended requirements largely reflect current prevailing disclosure practices relating to derivative instruments. The disclosure requirements are largely similar to the derivatives disclosure requirements of Form N-PORT, including, importantly, the requirement to disclose the underlying components of a non-public index or custom basket if the index or custom basket is the reference instrument for certain derivative contracts, and if the notional amount of the derivative contract exceeds 1 percent of the fund’s NAV. The amendments to Regulation S-X also augment reporting requirements for other investments, including reporting of investments in fund affiliates, and revised rules prescribing the form and content of fund financial statements.

Finally, the Reporting Rules amend Forms N-1A and N-3 to require additional disclosure regarding securities lending activities in funds’ statements of additional information (SAI) (or, in the case of closed-end funds, Form N-CSR), including disclosure of gross and net income from securities lending activities and fees and/or compensation paid by funds in connection with these activities.

Compliance Dates:

Form N-CEN	The SEC set a compliance date of June 1, 2018 for all funds. Form N-SAR will be rescinded on June 1, 2018. After the compliance date, funds should report on Form N-CEN within 75 days of the fund’s fiscal year end (75 days after the calendar year end for UITs).
	The compliance date for a related amendment to the Form N-CSR exhibit requirements is also June 1, 2018. See “ <i>Form N-CEN: Details—Form N-CSR Change Related to New Form N-CEN</i> ” <i>infra</i> for more information.

	Reporting of Lending/Borrowing Information will not be required until December 1, 2018, for funds and fund groups with net assets of over \$1 billion as of the end of their most recent fiscal year (Larger Funds), and June 1, 2019, for funds and fund groups with net assets of less than \$1 billion as of the end of their most recent fiscal year. Reporting of Swing Pricing Information, if applicable, will be required beginning November 18, 2018.
Amendments to Regulation S-X and Forms Relating to Securities Lending Activities	The SEC set a compliance date of August 1, 2017 for the amendments to Regulation S-X and the amendments to forms relating to securities-lending disclosure. Shareholder reports and registration statements filed on or after August 1, 2017 should comply with these new disclosure requirements.

Considerations Relating to Form N-CEN and Amended Regulation S-X Reporting

As noted in our previous article, the submission of information in XML format will allow the SEC to process and analyze information in ways that will have important consequences for funds, particularly with respect to SEC examinations and enforcement actions. Form N-PORT will provide the SEC monthly with a stream of timely data which may be analyzed to identify, among other things, funds that are performance outliers or whose performance may appear to the SEC Staff to be inconsistent with fund investment strategies or other benchmarks. In contrast, Form N-CEN provides a relatively static annual snapshot of a fund's profile, operations, and service providers.

Nonetheless, certain information reported on Form N-CEN (and not previously reported on Form N-SAR), may present a higher risk of eliciting inquiries from the SEC Staff. For example, open-end funds will be required to disclose on Form N-CEN whether any NAV error resulted in payments to shareholders or reprocessing of shareholder accounts. Reporting of this information may prompt the SEC Staff to ask how aggregate losses to a fund were calculated, whether NAV correction policies and procedures were followed, how affected shareholders were identified and made whole, and could result in an examination request merely due to the notice filing. Form N-CEN also requires additional information relating to valuation. In this respect, in addition to the current requirement in Form N-SAR that a fund disclose any material change in valuation methodologies, Form N-CEN requires the fund to identify the asset type and type of investment affected by the change. It is not difficult to imagine a robo-exam request in which the SEC Staff asks a fund to validate the original or modified valuation methodology and to provide the results of any back-testing of such methodologies for the investments that are impacted by the change. Increased inquiries in the form of robo-exam requests or otherwise may also be accompanied by increased inquiries or claims from potential litigants seeking to police fund operations.

Form N-CEN and amended Regulation S-X also raise issues relating to disclosure of information that may need to be resolved with third parties prior to the relevant compliance dates. Form N-CEN requires ETFs to report identifying information about their respective APs. Generally, APs are not identified in ETF registration statements and AP agreements generally provide that APs not be identified in the ETF's disclosure documents. ETFs may wish to examine their AP agreements to confirm that disclosure of any AP-specific information required by Form N-CEN is not prohibited by the agreements. Likewise, Regulation S-X

requires a fund to disclose potentially confidential information regarding the underlying components of a non-public index or custom basket, if the index or custom basket is the reference instrument for certain derivative contracts, and if the notional amount of the derivative contract exceeds 1 percent of the fund's NAV as of the close of the period. Currently, many index providers' license arrangements do not allow for such disclosure, except to licensees. Funds will need to consider whether derivatives holdings disclosure under amended Regulation S-X would violate the disclosure restrictions of any licensing arrangements and how to meet the new disclosure requirements. As mentioned earlier, a similar disclosure requirement also appears in Form N-PORT; however, as a timing matter, the Regulation S-X amendments are effective on August 1, 2017—almost a full year before the first Form N-PORT must be filed by Larger Funds.

New Form N-CEN: Details

Form N-CEN requires all registered investment companies, other than face-amount certificate companies, to provide much of the same general census-type information already contained in reports on Form N-SAR. In contrast to Form N-SAR, which is reported semi-annually within 60 days after the end of a fund's fiscal year and second fiscal quarter (but annually for UITs 60 days after the close of the calendar year), a fund must file Form N-CEN within 75 days of the fund's fiscal year-end. A fund with multiple series having different fiscal year-ends must file a separate report covering all series with the same fiscal year-end. A UIT must file one Form N-CEN within 75 days of the calendar year-end. All information submitted on Form N-CEN is publicly available immediately upon filing.

The discussion of Form N-CEN below highlights additional disclosure requirements in Form N-CEN that differ materially from the information currently reported on Form N-SAR. All funds must

complete Parts A and B and file any attachments required by Part G; funds organized as management investment companies, other than SBICs, must complete Part C; closed-end funds and SBICs must complete Part D; ETFs and ETMFs (including those organized as UITs) must complete Part E; and UITs must complete Part F.⁴

Part A: General Information. Both Forms N-SAR and N-CEN require information about the covered reporting period.

Part B: Information About the Registrant. In addition to the information required by Form N-SAR, Form N-CEN requires:

- A fund's CIK, LEI,⁵ public website (if any), and location of its books and records;⁶
- Information about a fund's directors and chief compliance officer, including the Central Registration Depository (CRD) number for each director and chief compliance officer, if available;
- Information regarding financial support a fund has received from certain affiliated entities during the reporting period;⁷
- Whether a fund has relied on exemptive relief granted by the SEC from one or more provisions of the 1940 Act, the Securities Act of 1933, or the Securities Exchange Act of 1934 during the reporting period;
- Whether a fund's independent public accountant(s) identified any material weaknesses in its report on the fund's internal controls and whether the accountant's opinion on the audit of the fund's financial statements was qualified in any manner;
- With respect to a material change in valuation methods, in addition to the information currently required by Form N-SAR, the (1) "asset type" category (as specified in Form N-PORT) and (2) type of investment involved;
- Whether any NAV error resulted in payments to shareholders or reprocessing of shareholder accounts; and

- Whether any payments of dividends or distributions were made to shareholders requiring a written statement pursuant to Section 19(a) of the 1940 Act and Rule 19a-1 thereunder.

Part C: Additional Questions for Management Investment Companies. For each fund organized as a management company, other than a SBIC, in addition to information currently required by Form N-SAR, Part C of Form N-CEN requires:

- Specific information on the classes of an open-end fund, including identifying information for each share class outstanding and the number of classes authorized, added, and terminated during the reporting period;
- The type of fund;⁸
- If an index fund, whether the index the fund tracks is constructed by an affiliated person of the fund and, if so, whether the index is exclusively constructed for the fund. An index fund must further provide information regarding tracking differences and tracking errors;⁹
- If a master-feeder fund, identifying information with respect to each registered and unregistered feeder fund, and, if a feeder fund, identifying information on its master fund;
- Whether the fund seeks to operate as a non-diversified investment company, as defined in Section 5(b)(2) of the 1940 Act;¹⁰
- Whether the fund invests in any controlled foreign corporations for purposes of investing in certain types of instruments, including commodities, and, if so, the name and LEI of the subsidiary;
- With respect to securities lending:
 - Whether the fund is authorized to engage in securities lending;
 - Whether the fund loaned securities during the reporting period (and, if so, whether any borrower defaulted on its obligations which resulted in the fund having to liquidate pledged collateral or being otherwise adversely affected, and whether the fund is indemnified against borrower default, and, if so, whether it exercised this right);
- Information about each securities lending agent and cash collateral manager, including whether such agent(s) is a first or second-tier affiliate of the fund;
- Information about the types of payments made to securities lending agents and cash collateral managers; and
- The monthly average of the value of securities on loan and net income from securities lending activities.
- Whether the fund relied on certain rules under the 1940 Act during the reporting period. In addition to Rules 10f-3 (exemption for the acquisition of securities during the existence of an underwriting or selling syndicate) and 17a-7 (exemption of certain purchase or sale transactions between a fund and certain affiliated persons) covered by Form N-SAR, Form N-CEN adds reporting on Rules 12d1-1 (exemptions for investments in MMFs), 15a-4 (temporary exemption for certain investment advisers), 17a-6 (exemption for transactions with portfolio affiliates), 17a-8 (mergers of affiliated funds), 17e-1 (brokerage transactions on a securities exchange), 22d-1 (exemption from Section 22(d) to permit sales of redeemable securities at prices which reflect sales loads set pursuant to a schedule), 23c-1 (repurchase of securities by closed-end funds), and 32a-4 (independent audit committees);
- Additional information regarding a fund's expense limitation arrangements, including whether any fees waived are subject to recoupment and whether any waived fees were recouped;
- Information on whether a fund service provider was hired or terminated during the reporting period and whether the service provider is affiliated with the fund or its adviser(s);

- Information on each person providing pricing services, whether it is affiliated with the fund or its adviser(s), and whether any pricing service was hired or terminated during the reporting period;
- Information on each committed and uncommitted line of credit, including the size of the line, the lender(s), whether the line is shared with other funds, whether the fund drew on the line of credit during the reporting period and, if so, the average dollar amount outstanding and number of days in use;¹¹
- Whether the fund engaged in inter-fund lending or inter-fund borrowing during the reporting period and, if so, the average amount of the loan and the number of days in use;¹² and
- Whether the fund engaged in swing pricing during the reporting period, and, if so, the swing-factor upper limit set by the fund.¹³

Part D: Additional Questions for Closed-End Funds and SBICs. Similar to Form N-SAR, closed-end funds and SBICs are required to report information on the securities they have issued, repurchases of securities during the reporting period, any default on long-term debt or dividends in arrears, and modification to instruments defining the rights of holders—although some of these disclosure items are simplified in Form N-CEN. Form N-CEN requires additional information relating to rights offerings and secondary offerings. In addition, closed-end funds must report advisory fees as a percentage of net assets and both closed-end funds and SBICs must report net operating expenses as a percentage of net assets. (Open-end funds currently report this information in XBRL format on Form N-1A.) SBICs also are required to provide information regarding investment advisers, transfer agents, and custodians in Part D, as they are not subject to Part C, where closed-end and open-end funds report this information.

Part E: Additional Questions for ETFs and ETMFs. Form N-CEN introduces a series of

questions that elicit information unique to ETFs and ETMFs including:

- The exchange on which the fund is listed and the fund's ticker symbol;
- Information about each AP, including (1) identifying information (for example, full name, SEC file number, CRD number, and LEI), (2) the dollar value of fund shares purchased and redeemed by each AP during the reporting period, and (3) whether any AP was required to post collateral in connection with the purchase or redemption of fund shares during the reporting period;
- The number of fund shares required to form a creation unit;
- Based on the dollar value paid for each creation unit purchased by APs during the reporting period, (1) the average percentage of the dollar value composed of cash, (2) the standard deviation of the percentage of the dollar value composed of cash, (3) the average percentage of the dollar value composed of non-cash assets and other positions exchanged in-kind, and (4) the standard deviation of the percentage of the dollar value composed of non-cash assets and other positions exchanged in-kind. Parallel information must be provided for the redemption of creation units;
- For creation units purchased by APs during the reporting period, the average transaction fee, (1) charged in dollars per creation unit, (2) charged for one or more creation units on the same business day, and (3) charged as a percentage of the value of the creation unit. For those creation units purchased by APs that were fully or partially composed of cash, the average transaction fee, (1) charged in dollars per creation unit, (2) charged for one or more creation units on the same business day, and (3) charged as a percentage of the value of the cash in the creation unit. Parallel information must be provided for the redemption of creation units;

- For a UIT that is an index fund, whether the index the fund tracks is constructed by an affiliated person of the fund and whether the index is exclusively constructed for the fund and information regarding tracking difference and tracking error; and¹⁴
- Whether the fund qualifies as an “in-kind ETF” for purposes of Rule 22e-4 under the 1940 Act.¹⁵

Part F: Additional Questions for UITs. Unlike Form N-SAR, which generally does not differentiate between UITs that are, and that are not, insurance company separate accounts, Form N-CEN makes this distinction and requires UITs that are insurance company separate accounts to make additional disclosure. A UIT that is an insurance company separate account is additionally required to disclose, (1) its series identification number; (2) for each security with a contract identification number, the number of individual contracts in force at the end of the reporting period, and certain other census-type information, including information relating to Section 1035 exchanges;¹⁶ and (3) whether the fund relied on Rules 6c-7 or 11a-2 under the 1940 Act during the reporting period. The Adopting Release notes that this information is either not currently filed with the SEC or is not filed in a structured format, thus providing the SEC with more data specific to these products and enhancing the SEC’s ability to monitor trends in the variable-annuity and variable-life insurance markets.

Part G: Attachments. Certain exhibits required on Form N-SAR are eliminated on Form N-CEN or will be reported elsewhere.¹⁷ Form N-CEN adds one new exhibit: A fund (other than a MMF) must provide further information if it received financial support from certain affiliated entities. (See “*Part B: Information About the Registrant*” *supra*.) Exhibits to Form N-CEN do not need to be submitted in XML format.

Form N-CSR Change Related to New Form N-CEN. Form N-CEN eliminates the current

Form N-SAR requirement to file a letter reporting a change in a fund’s independent registered public accountants. Effective June 1, 2018, this information must be filed as an exhibit to Form N-CSR. The Adopting Release explains that since Form N-CSR is filed semi-annually, the change will provide the SEC Staff more timely notice of any change to a fund’s independent registered public accountants.

Items Required by Form N-SAR that Are Eliminated by Form N-CEN. Form N-CEN eliminates a number of Form N-SAR reporting items. In the Adopting Release, the SEC noted that these previously reported items are no longer needed, outdated in their current form, provide only minimal benefits to an SEC review and impose significant costs on funds, or otherwise are, or will be, reported on other SEC forms.¹⁸

Amendments to Regulation S-X

Regulation S-X contains the requirements for the presentation of fund financial statements in registration statements and shareholder reports.¹⁹ This section discusses some of the significant changes mandated by amended Regulation S-X.²⁰

Derivatives Disclosure. Rule 12-13 (investments other than securities) is currently used by funds to report holdings in all derivatives, other than exchange-traded options. Because Rule 12-13 serves as a “catch all” category for investments that are not otherwise covered in the schedules to fund financial statements, funds report information on open-futures contracts, open forward currency contracts, and open swap contracts based on general disclosure conventions in the industry. The amendments to Regulation S-X re-designate current Rule 12-13 as new Rule 12-13D and add three separate new disclosure categories: Rules 12-13A (Open futures contracts), 12-13B (open forward foreign currency contracts), and 12-13C (open swap contracts). The new rules prescribe disclosure that is tailored to the specific derivative instrument.²¹

Investment Type	Current Rule or Reporting Conventions	Material Changes Prescribed by New Rules 12-13A, 12-13B and 12-13C
Open Futures Contracts	Rule 12-13—a description of the contract (including the expiration date), the number of contracts held, and any unrealized appreciation or depreciation.	New Rule 12-13A—additionally disclose the name of the reference asset or index in the description of the contract, the notional amount, and the value of the contract.
Open Forward Foreign Currency Contracts	Rule 12-13—a description of the contract (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.	New Rule 12-13B—additionally disclose the counterparty to the transaction.
Open Swap Contracts	Rule 12-13—a description of the swap (including a description of what is to be paid and received, and the maturity date), the notional amount, and any unrealized appreciation or depreciation.	<p>New Rule 12-13C—additionally disclose, (1) the terms of the swap,²² (2) the counterparty to the transaction (except for exchange-traded and centrally cleared swaps), (3) the value, and (4) any upfront payments or receipts.</p> <p>In the case of a swap contract with a reference instrument that is an index or basket of investments for which the components are publicly available on a website, or if the notional amount of the contract does not exceed 1 percent of the fund's NAV, each as of the balance sheet date, a fund must identify the index or basket. If the reference instrument is an index or basket that is not publicly available on a website, and the notional amount of the contract exceeds 1 percent of the fund's NAV as of the balance sheet date, the fund must identify the index or basket and separately list the 50 largest components and any other components where the notional value of the component exceeds 1 percent of the notional value of the index or basket. With respect to these separately listed components, the fund must disclose the (1) quantity held, (2) the value at the close of the period, (3) the percentage value when compared to the basket's net assets, and (4) a description of the underlying investment as would be required by Article 12 of Regulation S-X.</p>

Other Investments	Rule 12-13—a description of the investment, the balance at the close of period (quantity), and the value.	Re-designated as Rule 12-13D—the SEC revised the instructions to the rule to require a fund to, (1) additionally categorize the schedule, as applicable, by the related industry, country or geographic region of the investment, and (2) disclose information sufficient to understand the nature and terms of the investment.
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Rules 12-12B (Open option contracts written) and 12-12 (Investments in securities of unaffiliated issuers) are used by funds to report open option

contracts. The SEC amended current disclosure requirements applicable to both written and purchased option contracts as described below:

Investment Type	Current Rules	Material Changes Prescribed by the Amended Rules
Open Option Contracts Written	Rule 12-12B—the name of the issuer, number of contracts (or number of shares subject to the option), exercise price, expiration date, and value.	Re-designated as Rule 12-13—additionally disclose (1) a description of the contract (including a description of the underlying investment as would be required by Article 12 of Regulation S-X), (2) the counterparty to the transaction (except for exchange-traded and centrally cleared options), and (3) the contract's notional amount. If the underlying investment is an index or basket of investments, a fund must provide the same type of information required for a swap contract with a reference instrument that is an index or basket of investments. <i>See Open Swap Contracts, supra.</i>
Open Option Contracts Purchased	Rule 12-12—the name of issuer and title of issue, balance held at close of period (number of shares or principal amount of debt), and value.	Amended instructions to Rule 12-12 apply the same additional reporting requirements as apply under re-designated Rule 12-13 for option contracts written.

The Reporting Rules also rescind current Rule 6-10(a) that some funds relied on to make disclosure relating to derivatives in the notes to their financial statements. Rescission of Rule 6-10(a) means that funds must now prominently disclose details on their derivatives investments in the funds' financial statements rather than in the notes to the financial statements.

Investments in, and Advances to, Affiliates. Rule 12-14 prescribes disclosure requirements relating to investments in, and advances to, "affiliates" or companies in which the fund owns 5 percent or more of the outstanding voting securities. Amended Rule 12-14 removes the current requirement to disclose the amount of equity in net profit and loss for the reporting period. Instead, funds must disclose

(1) the net realized gain or loss, and (2) the net increase or decrease in unrealized appreciation or depreciation for each affiliated investment. Funds also must disclose (1) the aggregate of realized gain or loss, and (2) the aggregate increase or decrease in unrealized appreciation or depreciation for investments in affiliates not held at the close of the period.

Other Amendments Relating to Schedules of Investments. The SEC also significantly amended the instructions to Rule 12-12 through 12-14. The revised instructions augment and standardize, where relevant, the information provided in the funds’ schedules to their financial statements. Significant additional disclosure mandated by the revised instructions to Rules 12-12 through 12-14 are set forth below.

	12-12 (Investments in securities of unaffiliated issuers)	12-12A (Investments—securities sold short)	12-12B (Summary schedule of investments in securities of unaffiliated issuers)	12-13 (Open option contracts written)	12-13A (Open futures contracts)	12-13B (Open forward foreign currency contracts)	12-13C (Open swap contracts)	12-13D (Investments other than those presented in other schedules)	12-14 (Investments in and advances to affiliates)
Categorize schedule as required by Instruction 2 to Rule 12-12. ²³		■							■
Provide subtotals for each category of investments, subdivided by <i>both</i> (1) type of investment, and (2) industry, country, or geographic region, together with their percentage value compared to net assets. ²⁴	■	■	■					Note ²⁵	■
Identify each security the value of which was determined using significant unobservable inputs.	■	■	■	■	■	■	■	■	■
Indicate each investment that cannot be sold because of applicable restrictions or conditions. ²⁶	Note ²⁷		Note ²⁸	■	■	■	■	■	
Indicate the interest rate or preferential dividend rate and maturity date for certain debt instruments. ²⁹	■	■	■						■
Indicate each security held in connection with open put or call options, loans for short-sales, or where any portion of an investment is on loan. ³⁰	■		■						■

Other Amendments to the Form and Content of Financial Statements. The SEC adopted certain other amendments to the form and content of fund financial statements including, notably to:

- Remove the current tax-basis disclosure requirement from current Rules 12-12, 12-12C, and 12-13, and include it in Article 6 of Regulation S-X so that tax-basis disclosure relates to the portfolio as a whole;

- Eliminate current Rule 6-04.4, which requires disclosure of “total investments” on a fund’s balance sheet under “Assets.” The SEC observed that investments in derivatives could potentially be presented under both assets and liabilities on the balance sheet making, for example, the totaling of a derivatives contract with unrealized appreciation, and a liability balance for a separate derivative contract with unrealized depreciation potentially misleading;
- Amend instructions to Rule 6-07.1 to require funds to make a separate disclosure for other types of income (for example, income from non-cash dividends or payment of in-kind interest) in the statement of operations, if all income of the particular type exceeds 5 percent of the fund’s investment income; and
- Amend Rules 6-07.7(a) and 6-07.7(c) (current Rule 6-07.7(d)) to conform statement of operations disclosures of, (1) the net realized gains or losses from investments, and (2) the net increase or decrease in the unrealized appreciation or depreciation of investments to reflect the updated derivatives disclosure requirements.

Amendments to Forms Relating to Securities Lending Activities

According to the Adopting Release, in order to provide investors with more information on funds’ securities lending activities and the impact of securities lending on fund performance, the SEC adopted amendments to certain forms to require standardized disclosure relating to these activities in SAIs (Forms N-1A and N-3) and, with respect to closed-end funds only, shareholder reports (Form N-CSR).³¹ A fund must disclose: (1) gross and net income from securities lending activities and related services; (2) fees and/or compensation paid by it in connection with securities lending, in the aggregate and broken-out by enumerated categories; and (3) a description of the services provided to the fund by

the securities lending agent during the most recent fiscal year. Notably, the SEC was persuaded by commenters who argued that public disclosure of specific fee arrangements with securities lending agents (including any revenue-sharing split), a proposed requirement, was unnecessary.

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NOTES

- ¹ Investment Company Reporting Modernization, Release Nos. 33-10231; 34-79095; IC-32314 (Oct. 13, 2016) (Adopting Release) <https://www.sec.gov/rules/final/2016/33-10231.pdf>.
- ² Concurrently with the adoption of the Reporting Rules, the SEC adopted new and amended rules impacting open-end funds’ liquidity management. New Rule 22e-4 under the 1940 Act requires open-end funds (other than money market funds (MMFs)) to adopt liquidity risk management programs and disclose liquidity-related information. See *Liquidity Risk Management Programs*, Release Nos. 33-10233; IC-32315 (Oct. 13, 2016), available at <https://www.sec.gov/rules/final/2016/33-10233.pdf>.
- ³ In a companion release to the SEC’s release on liquidity risk management, the SEC adopted amendments to Rule 22c-1 under the 1940 Act to permit, but not require, open-end funds (other than MMFs and ETFs) to use “swing pricing”—a process of adjusting the NAV of fund shares so that purchasing or redeeming investors bear a portion of the costs of entering or exiting the fund under certain circumstances. See *Investment Company Swing Pricing*, Release Nos. 33-10234; IC-32316 (Oct. 13, 2016), available at <https://www.sec.gov/rules/final/2016/33-10234.pdf>.
- ⁴ Funds that are registered on Form N-3 must also complete certain items in Part F as directed by Item B.6.c.i of Form N-CEN.
- ⁵ The LEI is a unique identifier generally associated with a single corporate entity and is intended to

provide a uniform international standard for identifying counterparties to a transaction. LEIs are assigned by utilities recognized by the Global LEI Regulatory Oversight Committee or accredited by the Global LEI Foundation.

⁶ To avoid the filing of duplicative information, the SEC amended Forms N-1A, N-2, N-3, N-4 and N-6 to exempt funds from the books-and-records disclosure requirements on those registration forms if the information is reported on Form N-CEN.

⁷ These include any affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such a person. The form clarifies that routine waiver of fees or reimbursement of a fund's expenses would not constitute financial support and lists other exclusions from the meaning of financial support, including routine inter-fund lending.

⁸ A fund must self-identify as: (1) an ETF or ETMF; (2) an index fund; (3) a fund seeking to achieve performance results that correlate with a benchmark (*i.e.*, a multiple of a benchmark, the inverse of a benchmark, or a multiple of the inverse of a benchmark); (4) an interval fund; (5) a fund-of-funds; (6) a master-feeder fund; (7) a MMF; (8) a target-date fund; or (9) an underlying fund to a variable-annuity or variable-life-insurance contract.

⁹ An index fund must provide: (1) the annualized difference, before and after fees and expenses, between the fund's total return and the index's return during the reporting period; and (2) the annualized standard deviation, before and after fees and expenses, of the daily difference between the fund's total return and the index's return during the reporting period. The SEC stated in the Adopting Release that in providing this information, it expects an index fund that is an ETF to use its NAV-based total return, rather than market-based total return.

¹⁰ This item differs from the information requested on Form N-SAR, which requires a fund to report whether it was a diversified investment company at any time during the period or at the end of the reporting period. The Adopting Release explains that the change is intended to capture those funds that

seek to operate as non-diversified funds—even if they meet the definition of a diversified fund at the end of a reporting period.

¹¹ The compliance date for disclosure of Lending/Borrowing Information is later than the compliance date to file Form N-CEN. See “*Overview—Compliance Dates*,” *supra*.

¹² *Id.*

¹³ The compliance date for disclosure of Swing Pricing Information is later than the compliance date to file Form N-CEN. See “*Overview—Compliance Dates*,” *supra*.

¹⁴ As with index funds, ETFs and ETMFs must provide: (1) the annualized difference, before and after fees and expenses, between the fund's total return and the index's return during the reporting period; and (2) the annualized standard deviation, before and after fees and expenses, of the daily difference between the fund's total return and the index's return during the reporting period.

¹⁵ The compliance date for this disclosure Item is the same as the compliance date for disclosure of Lending/Borrowing Information. See “*Overview—Compliance Dates*,” *supra*.

¹⁶ This information includes: (1) name of the security, (2) contract identification number, (3) total assets attributable to the security, (4) number of contracts sold, (5) gross premiums received, (6) gross premiums received pursuant to Section 1035 exchanges, (7) number of contracts affected in connection with premiums paid pursuant to Section 1035 exchanges, (8) amount of contract value redeemed, (9) amount of contract value redeemed pursuant to Section 1035 exchanges, and (10) number of contracts affected in connection with contract value redeemed pursuant to Section 1035 exchanges.

¹⁷ These include exhibits relating to policies with respect to securities investments, matters submitted to a vote of security holders, changes in security for debt, default and arrears on senior securities, changes in control, terms of new or amended securities, revaluation of assets or restatement of capital share account, changes in a fund's independent registered public accountants, mergers, transactions effected

pursuant to Rule 10f-3 under the 1940 Act, and actions required to be reported pursuant to Rule 2a-7 under the 1940 Act.

¹⁸ Eliminated N-SAR items include: reporting of considerations which affected the participation of brokers-dealers in commissions or other compensation paid on portfolio transactions; items relating to fees and expenses, including front-end and deferred/contingent sales loads, redemption and account maintenance fees, Rule 12b-1 fees, and advisory fees; information relating 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 certain other condensed balance sheet data items; certain information specific to SBICs and UITs; and monthly sales and repurchase information for closed-end funds.

¹⁹ For purposes of this discussion of Regulation S-X, references to “funds” also include business development companies.

²⁰ The amendments to Regulation S-X renumber certain rules in Article 12 and break-out current Rule 12-13 into four separate subsections. The table below sets forth the current and amended numbering schemes:

Current rules	Amended rules
12-12 (Investments in securities of unaffiliated issuers)	Same
12-12A (Investments—securities sold short)	Same
12-12B (Open option contracts written)	12-13 (Open option contracts written)
12-12C (Summary schedule of investments in securities of unaffiliated issuers)	12-12B (Summary schedule of investments in securities of unaffiliated issuers) 12-12C (Removed and reserved)

12-13 (Investments other than securities)	12-13A (Open futures contracts)
	12-13B (Open forward foreign currency contracts)
	12-13C (Open swap contracts)
	12-13D (Investments other than those presented in §§ 210.12-12, 12-12A, 12-12B, 12-13, 12-13A, 12-13B, and 12-13C)
12-14 (Investments in and advances to affiliates)	Same

²¹ In conjunction with the expanded derivatives disclosure requirements, the SEC eliminated the exception in Schedule II of current Rule 6-10 which does not require reporting under current Rule 12-13 if the investments, at both the beginning and end of the period, amount to 1 percent or less of the value of a fund’s total investments. In eliminating the exception, the SEC reasoned that a fund may have significant notional amounts in its portfolio that could be valued at 1 percent or less of the value of its total investments.

²² Instructions to new Rule 12-13C state that the description provided should be sufficient to understand the terms of payments to be received and paid and outlines disclosure required for credit-default swaps, interest-rate swaps, and total-return swaps.

²³ The proposed rule would have required a fund to categorize investments in this schedule by (1) type of investment, (2) the related industry, and (3) the related country or geographic region. The SEC ultimately did not require categorization by both industry and country or geographic region, agreeing with commenters who argued that such presentation may be confusing to investors.

²⁴ Currently, funds are required to provide subtotals by a single type of group such as business grouping or instrument; industry, country or geographic region; or not at all.

- ²⁵ Rule 12-13D requires a fund to categorize the schedule by type of investment and, as applicable, the related industry, country, or geographic region rather than requiring subtotals for each category.
- ²⁶ The instructions to Rule 12-13 currently require that a fund identify each investment that is not “readily marketable,” which is defined as including investments for which there is no independent publicly quoted market and investments which cannot be sold because of restrictions or conditions applicable to the investment.
- ²⁷ Rule 12-12 already requires a fund to identify restricted securities.
- ²⁸ Rule 12-12B already requires a fund to identify restricted securities.
- ²⁹ For variable rate securities, a fund must describe the reference rate and spread and (1) the end of period interest rate, or (2) disclose the end of period reference rate for each reference rate described in the schedule. For payment of in-kind securities, a fund must disclose the rate paid in-kind.
- ³⁰ For Rules 12-12 and 12-12B, the amended instructions add the requirement to indicate whether any portion of an investment is on loan. For Rule 12-14, this instruction is a new requirement.
- ³¹ This disclosure was originally proposed to be included in a fund’s financial statements. The SEC, however, moved the disclosure in response to concerns about including the disclosure in the financial statements, including concerns about the costs and length of such disclosure.

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