SEC Delays Data Reporting Rule Citing Cybersecurity Concerns

Wednesday, December 13, 2017

The Securities and Exchange Commission (SEC) announced on December 8, 2017, that it would postpone the compliance date for filing new reports on Form N-PORT—one of the SEC’s new measures to modernize and enhance disclosures for investment companies (the “Modernization Rules”). The postponement follows the SEC’s September 2017 acknowledgement that its EDGAR electronic filing system had been hacked in 2015. SEC Chairman Jay Clayton stated that the SEC was considering postponing the Modernization Rules while testifying before Congress on October 3, 2017, noting that because the filing will contain potentially sensitive information, the SEC needs to ensure that it can secure the data required by the Modernization Rules before proceeding. The postponement means that the reporting deadline for large firms is April 30, 2019, while the new deadline for smaller complexes is one year later on April 30, 2020. Note, however, that larger fund complexes with net assets of $1 billion or more will still be required to maintain Form N-PORT information internally and make it available to the SEC upon request in lieu of filing the form on EDGAR, beginning with the initial compliance date of June 1, 2018.

Form N-PORT in a Nutshell

Form N-PORT, which will replace the current quarterly filing on Form N-Q, requires all registered investment companies (other than money market funds, small business investment companies and unit investment trusts that operate as exchange-traded funds) to report portfolio information in Extensive Markup Language format. Reports on Form N-PORT will be filed with the SEC separately for each series of a fund company on a monthly basis (no later than 30 days after the end of each month).

The adoption of Form N-PORT results in a significant increase in the volume of reporting obligations for investment companies. In particular, Form N-PORT requires new disclosure of:

1. Derivative investments.
2. Certain risk metric calculations that measure a fund’s exposure and sensitivity to changes in market conditions, such as changes in asset prices, interest rates or credit spreads.
3. The fund’s monthly returns.
4. Net realized gains or losses and net change in unrealized appreciation or depreciation for the fund on its derivative and non-derivative investments, respectively.
5. Certain fund activities, such as securities lending, repurchase agreements and reverse repurchase agreements, including information about the counterparties.
6. Certain information regarding the liquidity of a fund’s holdings and the fund’s liquidity risk management practices pursuant to the SEC’s new Investment Company Liquidity Risk Management Programs rule (the “Liquidity Management Rule”).

Compliance with Form N-PORT will also require investment companies to obtain and report a Legal Entity Identifier (LEI) number of the registrant and each series, which is a unique identifier generally associated with a corporate entity and intended to provide a uniform international standard for identifying counterparties to a transaction. This will require funds or registrants to obtain an LEI if they have not done so already, which currently entails a one-time registration fee and a modest yearly fee to cover maintenance costs.
Implications of Postponement of Form N-PORT

Most notable is the delay of the initial filing deadlines for the new form from June 1, 2018, to April 30, 2019, for fund complexes with net assets of $1 billion or more and from June 1, 2019, to April 30, 2020, for fund complexes with less than $1 billion in net assets.

Larger fund complexes with net assets of $1 billion or more will still be required to maintain Form N-PORT information internally and make it available to the SEC upon request in lieu of filing the form on EDGAR beginning with the initial compliance date of June 1, 2018.

The delay also impacts portions of the Liquidity Management Rule, which will require funds to begin filing information about how easily portfolio holdings can be traded on Form N-PORT, giving funds more time to publicly report liquidity data.

Finally, funds will have more time to obtain an LEI, if they have not already done so. The SEC is requiring funds to continue to file reports on existing Form N-Q until they begin filing on Form N-PORT in April 2019 for larger complexes and April 2020 for smaller complexes. The revised compliance dates are set forth in the table below.

<table>
<thead>
<tr>
<th>Original Compliance Date</th>
<th>New Compliance Date</th>
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<tbody>
<tr>
<td>Larger Complexes with Net Assets of $1 Billion or More</td>
<td>June 1, 2018 (with first six months filed non-publicly)</td>
</tr>
<tr>
<td>Smaller Complexes with Less than $1 billion in Net Assets</td>
<td>June 1, 2019</td>
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Practice Points and Tips

Service providers should continue to review their technological capabilities and assess changes needed to ensure that they will be able to collect, process and present the required information for Form N-PORT, particularly larger complexes that must maintain the information internally and make it available to the SEC upon request. Fund directors should also continue to stay apprised of the new rules and how they will impact their reporting and monitoring obligations. Directors may consider requesting regular status updates from their service providers as they prepare to meet the new reporting obligations.

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