

ALERTS

New Treasury Department Reporting Obligations for Certain US Investment Managers

September 7, 2011

Executive Summary

Starting Sept. 30, 2011, U.S. investment managers that meet or exceed certain reporting thresholds described below must file Treasury International Capital ("TIC") Form SLT, quarterly in 2011, and monthly in 2012. U.S. investment managers file TIC Form SLT with the Federal Reserve Bank of New York. These filings may be made electronically. U.S. investment managers are required to present a consolidated snapshot of the holdings and issuances of all U.S.-managed funds and accounts. In addition to requiring reporting at the portfolio level, TIC Form SLT also requires fund-level reporting, including holdings by foreign residents in a U.S. fund, and holdings between funds in a master-feeder structure where one or more funds is a foreign entity and the other is a U.S. fund.

Reporting Obligations

The TIC reporting system collects information relating to cross-border financial flows and positions between U.S. residents and foreign residents. TIC Form SLT will collect information on ownership of foreign long-term securities by U.S. residents. The U.S. Treasury uses the data in the "formulation of international financial and monetary policies and for the preparation of the U.S. balance of payments accounts and U.S. international investment position."^[1] The data gathered on TIC Form SLT

will be kept confidential by the government and will be used in reports on an aggregate basis only.

On March 31, 2011, the U.S. Treasury proposed TIC Form SLT, which will apply to certain U.S. investment managers of hedge funds and private equity funds. U.S. investment managers should consider whether reporting requirements mandated by the TIC Form SLT apply to their organizations. While TIC Form SLT applies to a variety of U.S.-resident institutions, this *Alert* only addresses its potential impact on U.S. investment managers.[2]

A U.S. investment manager will have a filing obligation on TIC Form SLT if its consolidated reportable holdings and issuances of long-term securities (as defined in the TIC Form SLT instructions, but which generally includes equity and debt instruments, such as common stock, preferred stock and partnership interests as well as bonds, notes and asset-backed securities, but excludes, among other things, loans and derivative contracts) have a total fair market value of \$1 billion or more as of the last business day of the reporting month. This minimum threshold test requires the U.S. investment manager to aggregate all holdings across all applicable funds and foreign resident countries; it is not a fund-by-fund or a country-by-country test.

To the extent that the threshold amount is met, U.S. investment managers will be required to report: (i) the fair market value of holdings by their U.S. funds in foreign securities,[3] (ii) the fair market value of holdings by foreign investors in U.S. hedge funds and U.S. private equity funds formed by the U.S. investment manager, and (iii) the fair market value of holdings between U.S. master or feeder funds and their counterpart foreign master or feeder funds.

- *Holdings of Securities:* Holdings of securities issued by foreign residents may be reportable, except to the extent that such transactions or holdings qualify as “direct investments”[4] or are reportable by a U.S.-resident custodian. TIC Form SLT is designed to minimize reporting by end investors, such as U.S. investment managers, by requiring that certain financial intermediaries (e.g., brokers, dealers, issuers, custodians and paying agents) provide the majority of the reporting. To avoid duplication, U.S. investment managers are required to report only transactions and holdings that are not required to be reported by an intermediary. Note, however, that prime brokers located outside of the United States will not have TIC Form SLT reporting obligations because

they are not U.S. resident custodians (even if they are affiliated with a U.S. financial firm). It is important, therefore, for U.S. investment managers to contact each of their prime brokers and determine if that prime broker will be making the TIC Form SLT filing with respect to the foreign securities managed by the U.S. investment manager.

- *Holdings by Investors:* U.S. investment managers are required to report the holding of any interests in their U.S. funds and accounts issued directly to, or placed directly with, foreign residents. Because many U.S. investment managers of hedge funds offer securities to foreign residents through a foreign entity, this part of the report will probably be more relevant to U.S. investment managers of private equity funds, which frequently offer securities of U.S. entities to foreign residents.
- *Master-Feeder Structure:* The TIC Form SLT filing instructions provide detailed examples of a number of cases in which holdings between feeder and master funds must be reported. [5] For example, if the reporting threshold is passed, a U.S. investment manager of a hedge fund set up as a master-feeder structure, with a U.S. feeder fund and a Cayman Islands master fund, will be required to report ownership by the U.S. feeder fund of shares in the Cayman Islands master fund.

The objective and scope of TIC Form SLT is broad. The instructions canvass a large number of possible reportable fund-related issuances, transactions and portfolio investments. Nevertheless, three important analyses should be undertaken by U.S. investment managers whose fund transactions and sizes come within range of the threshold reporting levels: (i) determine whether your existing financial intermediaries have a reporting obligation (under TIC Form SLT) with respect to the U.S. funds and accounts you manage; (ii) determine whether your U.S. funds have issued securities to foreign residents; and (iii) determine whether your current master-feeder fund structure, including master-feeder holdings, could, in the aggregate, trigger the applicable reporting obligations.

Timing

TIC Form SLT filings must be made on a quarterly basis during 2011 and on a monthly basis starting Jan. 31, 2012. The effective date for TIC Form SLT is Sept. 30, 2011. TIC Form SLT must be filed no later than the 23rd day of the month following the last business day of the month in which a U.S. investment manager's holdings exceed the reporting threshold. If an

investment manager's holdings exceed the threshold on Sept. 30, 2011, the first filing deadline will be **Oct. 24, 2011** (as the 23rd is a Sunday). Once the threshold has been passed, U.S. investment managers must continue to file for the balance of a calendar year even if their holdings in subsequent months fall below the reporting threshold.

For a copy of the TIC Form SLT, its proposed instructions and Frequently Asked Questions, please visit: <http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-slt.aspx>.

Please note that the Federal Reserve Bank of New York held a training seminar which provided information on reporting criteria, data concepts and preparation of the TIC Form SLT. A webcast of the seminar is available for viewing until Oct. 20, 2011 at: http://www.newyorkfed.org/newsevents/events/banking/2011/0405_2011.html.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] Departmental Offices; Proposed Collections; Comment Requests, Final Rule, 75 Fed. Reg. 62447 (Oct. 8, 2010).

[2] It is important to note that investment managers that maintain their primary office outside of the United States but maintain branch offices in the United States or advise funds or accounts formed in the United States may also have TIC Form SLT filing obligations on behalf of the U.S. resident funds, accounts or offices.

[3] An investment manager would also need to report the fair market value of holdings by their non-U.S. funds in U.S. securities if such securities are held in an omnibus account.

[4] A "direct investment" includes U.S. resident ownership of 10 percent or more of the voting equity securities of a foreign business, and foreign resident ownership of 10 percent or more of the voting equity securities of a U.S. business. Limited partners are deemed to be passive owners and, accordingly, cannot qualify to have made a "direct investment" in the applicable limited partnership. Direct investments are not reported on TIC Form SLT. Instead, they are reported on a reporting system administered by the Bureau of Economic Affairs ("BEA").

[5] While feeder funds often hold more than 10 percent of the corresponding master fund's voting securities and would therefore seem to qualify as "direct investments" (reported to the BEA), the examples provided in the instructions state that these investments are portfolio transactions and/or holdings subject to TIC Form SLT.

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