



U.S. Treasury Department Unveils New Reporting Requirement for Cross-Border Holdings of Foreign Securities and Issuances of U.S. Securities

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The U.S. Treasury Department is rolling out a new reporting requirement that will collect, on a monthly basis, information relating to foreign “long-term” securities held by U.S. residents, as well as information relating to U.S. long-term securities owned by foreign residents. Reporting on the new “TIC Form SLT” will be required of major U.S. companies, funds and their investment advisers, and other entities that have consolidated reportable holdings or issuances with a fair market value of at least \$1 billion as of the last day of any month.

For 2011, reporting on TIC Form SLT will be conducted on a quarterly basis, with the first report due on October 24, 2011 for the quarter ending September 30, 2011. Mandatory monthly reporting commences next year.

A. BACKGROUND

The U.S. Government imposes a wide range of reporting requirements on U.S.-resident entities with regard to their cross-border transactions. The two largest systems of reporting are those of the Treasury Department and the Commerce Department. The Treasury Department’s forms are part of the Treasury International Capital (“TIC”) reporting system and, in practice, are administered by the Federal Reserve Bank of New York. The Commerce Department’s forms are administered through its Bureau of Economic Analysis. Both sets of forms are conducted primarily under the authority of the International Investment and Trade in Services Survey Act (the “Survey Act”), the main purpose of which is to collect data to aid U.S. regulators in monitoring balance-of-payments and international investment positions, as well as to assist in the formulation of U.S. international financial and monetary policies.

Among the filings under the TIC reporting system are two annual forms, called the TIC Form SHC and the TIC Form SHL. These forms monitor U.S.-resident ownership of foreign securities and foreign-resident holdings of U.S. securities. In light of the recent global financial crisis, the Treasury Department is seeking more timely information regarding ownership of U.S. and foreign securities, particularly information regarding U.S. external claims and liabilities. While the Treasury Department has annual data on holdings of long-term securities, it has lacked monthly data. The new TIC Form SLT is designed to fill this gap.

B. TIC FORM SLT REPORTING REQUIREMENT

TIC Form SLT must be filed by certain U.S. persons whose consolidated total of all long-term U.S. and foreign securities has an aggregate fair market value equal to or more than \$1 billion as of the last business day of any month (the “Reporting Threshold”).

In assessing whether the Reporting Threshold has been met or exceeded, major U.S. companies, funds and their investment advisers, and other parties will need to monitor:

- *U.S. securities* that they issue to and that are directly owned by foreign residents (*i.e.*, where no U.S.-resident custodian or central securities depository is used); and
- *foreign securities* that they hold directly in an end-investor capacity (*i.e.*, where no U.S.-resident custodian is used).

If the Reporting Threshold is triggered, then the company, investment adviser or other filer will need to complete the TIC Form SLT by listing, among other things, the fair market value of its holdings and issuances categorized separately by (i) type (*e.g.*, equity or debt securities) and (ii) the country where either the issuer of the foreign securities is organized or where the foreign holder of a securities issuance is organized or domiciled.

C. PARTIES SUBJECT TO REPORTING

As a general matter, all U.S. persons (defined broadly to include natural persons and a variety of corporate entities that reside in the United States or are otherwise subject to U.S. jurisdiction) that are (i) U.S.-resident issuers or (ii) U.S.-resident end investors *and* that, in each case, meet or exceed the Reporting Threshold in a given month must file the TIC Form SLT. U.S.-resident custodians or central securities depositories that manage or administer the custody or safekeeping of securities or other assets for institutional or private investors will also be subject to reporting on TIC Form SLT.

1. U.S.-Resident Issuers – A Focus on Issuances of U.S. Securities to Foreign Residents

U.S.-resident issuers must report all long-term securities issued by them (including any of their subsidiaries) *directly* to foreign residents, including:

- a) registered securities that are owned by foreign residents for which neither a U.S.-resident custodian nor a U.S.-resident central depository is used;
- b) book-entry securities that are held at a foreign-resident central securities depository;
- c) bearer securities; and
- d) shares or other units or other equity interests issued directly to or placed with foreign residents (*e.g.*, a U.S.-resident master fund's issuance of shares to a Cayman-resident feeder fund, or the issuance of limited partnership interests of a U.S. limited partnership to foreign residents).

2. U.S.-Resident End-Investors – A Focus on Holdings of Foreign Securities

U.S.-resident end-investors must report all investments in long-term foreign securities for their own portfolio or for the portfolios of clients that are *not* held by U.S.-resident custodians or depositories. These securities include those that are held-for-trading, available-for-sale, held-for-maturity, or which have been invested on behalf of others.

U.S.-resident end-investors include:

- a) financial and non-financial organizations;
- b) managers or advisers of a variety of private funds (*e.g.*, private equity funds, hedge funds, mutual funds);
- c) managers of private and public pension funds;
- d) insurance companies;
- e) foundations and universities;
- f) trusts and estates; and
- g) funds and similar entities that own shares or units of, or other equity interests in, a foreign-related or non-related entity (*e.g.*, a U.S.-based feeder fund owning shares of an offshore-based master fund).

D. ONLY “LONG-TERM” SECURITIES ARE SUBJECT TO REPORTING

TIC Form SLT concerns only long-term securities. As a general matter, long-term securities are those with an original maturity of more than one year or with no contractual maturity. This would include a variety of equity (*e.g.*, common stock, preferred stock, LLC interests, LP interests in private equity funds and hedge funds) and debt instruments (*e.g.*, bonds, notes, asset-backed securities, convertible bonds and debt with attached warrants, index-linked certificates).

Securities expressly excluded from TIC Form SLT reporting include: derivative contracts, loans and loan participations, letters of credit, bank deposits and CDs, annuities, securities taken in as collateral, securities received in repurchase/resale agreements, and general partnership ownership interests.

Importantly, securities held as part of a “direct investment relationship” are also not subject to reporting on TIC Form SLT (such as direct investments in a fund by its general partner).¹ A

¹ Note that limited partners in a partnership are not considered to have voting rights and, therefore, cannot have a direct investment. On the other hand, general partnership ownership interests are always considered to be direct investments and the instructions state that they should be excluded from TIC Form SLT reporting.

direct investment relationship generally exists when a U.S. resident owns, directly or indirectly, 10% or more of the voting securities of a foreign business or when a foreign resident owns, directly or indirectly, 10% or more of the voting securities of a U.S. business. However, such holdings may implicate filing obligations with other U.S. agencies.²

E. CONSOLIDATION RULES

In calculating reportable securities, the instructions to TIC Form SLT indicate that U.S.-resident entities, including bank holding companies, should consolidate all their U.S.-resident subsidiaries in accordance with U.S. GAAP.

An investment adviser or manager should file one consolidated report of the holdings and issuances of all U.S.-resident entities within its organization and all U.S.-resident entities that it advises or manages.³ U.S.-resident trusts, special purposes entities, special purpose vehicles, and variable interest entities consolidated under U.S. GAAP should also be consolidated.

F. ACCOUNTING, VALUATION, AND CURRENCY CONVERSION RULES

Long-term securities should be reported, using settlement date accounting, at their fair market value as of the last business day of the month, in accordance with ASC 820 (formerly FAS 157). If reportable securities are not denominated in U.S. dollars, then the foreign currency denominated fair value should be converted into U.S. dollars by reference to the spot exchange rate as of the close of business on that day.

G. REPORTING DEADLINES AND RECORD RETENTION

TIC Form SLT is a monthly reporting form. Once the consolidated total of all reportable long-term securities for a reporting entity has a total fair market value exceeding the Reporting Threshold on the last business day of a reporting month, then the filer must submit a report for that month no later than the 23rd calendar day (or the next business day, in the case of a

² For example, the Commerce Department has its own series of forms that survey U.S. direct investments abroad and foreign direct investments in the United States. These forms generally concern investment stakes in which a U.S. person owns 10% or more of the voting securities of a foreign business enterprise or in which a foreign person owns 10% or more of the voting securities of a U.S. business enterprise.

In addition, as a general matter, the acquisition of 10% or more of the voting securities of a U.S. insured depository institution or a company that controls such institution will trigger filing requirements with the relevant federal banking agencies.

³ By way of example, if a U.S. investment manager created a Cayman master fund with a U.S. feeder fund and a Cayman feeder fund, the investments that the U.S. feeder fund has in the Cayman master fund should be reported, on behalf of the U.S. feeder fund, by the investment manager as U.S. ownership of foreign equities. On the other hand, the investments that the Cayman feeder fund has in the U.S. master fund should be reported, on behalf of the U.S. master fund, by the investment manager as foreign ownership of U.S. equities.

weekend or holiday) of the month following the report “as of” date. Importantly, once the Reporting Threshold is triggered for a given month, the reporting entity must submit a report for each remaining month in that calendar year, regardless of whether the Reporting Threshold is met in any subsequent month.

As part of the transition to this new compliance requirement, reporting on TIC Form SLT will be phased in gradually at first. For 2011 only, TIC Form SLT will be required to be submitted quarterly as of September 30 and December 30. After 2011, mandatory monthly reporting on TIC Form SLT will begin with the report that is as of January 31, 2012.

A completed TIC Form SLT can be submitted to the Federal Reserve Bank of New York by using its special electronic submission system or by either traditional mail or fax. All filed reports must be retained by the filer for three years from the date of submission.

H. CONFIDENTIALITY AND RESTRICTED USE

Consistent with the treatment of other filings under the TIC reporting system, the Treasury Department and the Federal Reserve Bank of New York will generally give confidential treatment to TIC Form SLT filings. Data may be shared with other federal agencies, but the data reported by individual respondents will not be published or otherwise publicly disclosed. Also, aggregate data derived from reports on TIC Form SLT may be presented only in a manner that will not reveal the identity of any individual filer.

As a statutory matter, data derived from surveys conducted under the authority of the Survey Act may generally be used only for analytical or statistical purposes. Accordingly, it is not expected that data derived from TIC Form SLT reporting will be used for purposes of taxation, investigation, or regulation.

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For more information, please contact a member of Simpson Thacher’s Financial Institutions Group or Investment Management Practice.

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