

NEW TREASURY INTERNATIONAL CAPITAL REPORTING REQUIREMENTS FOR PRIVATE FUNDS AND OTHERS

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To Our Clients and Friends:

Many private equity firms, hedge fund advisers and other financial institutions may be surprised to learn that they will soon be required to file reports with the Treasury Department detailing certain portfolio investments in foreign entities and interests in their funds that are held by foreign residents.

Under the Treasury International Capital (“TIC”) reporting system, the Treasury Department and Federal Reserve System are implementing a new reporting requirement—“Form SLT”—regarding cross-border holdings of long-term securities. Earlier this month, the Office of Management and Budget approved the collection of information contained in the Form SLT, clearing the way for Treasury and the Federal Reserve to proceed with this new requirement.

A number of clients may already be aware of the TIC system due to TIC Form S and Form C reporting obligations. TIC Form S is used to capture data on transactions in long-term securities undertaken by U.S. residents directly with foreigners. For purposes of TIC S, a reportable “transaction” includes purchases or sales, undertaken directly with foreign residents, of equity securities (including common and preferred stock and limited partnership interests) or debt securities (including bonds and notes) having a maturity exceeding one year. Investments between U.S. and foreign affiliated funds are generally regarded as reportable transactions.

TIC C forms are used to report liabilities to, and claims against, unaffiliated “foreign residents.” There are two TIC C forms. TIC Form CQ-1 provides a snapshot of *financial liabilities* to, and *financial claims* against, unaffiliated foreign residents. TIC Form CQ-2 provides a snapshot of *commercial liabilities* owed to, and *commercial claims* against, foreign residents. Private fund sponsors tend to be primarily concerned with Form CQ-1.

The new Form SLT reporting requirement will be applicable to a broad range of institutions, which may include private funds. As discussed in detail below, certain cross-border holdings of equity interests and long-term securities will need to be reported on Form SLT. Any U.S. private fund that issues limited partnership interests to non-U.S. investors or invests in non-U.S. securities (excluding positions of more than 10% of voting equity and excluding all securities

held through a U.S. resident custodian) may need to report if the aggregate value of such issuances and investments exceeds \$1 billion. For a non-U.S. private fund (such as a fund organized as a Cayman Islands exempted limited partnership or an English limited partnership), no reporting is required.

Going forward, the TIC Form SLT report must generally be submitted to the Federal Reserve no later than the 23rd calendar day following the last day of the month in which a reporting requirement is triggered.

HOW ARE REPORTS USED AND ARE REPORTS CONFIDENTIAL?

As with the other TIC reporting forms, Form SLT will be used to collect economic and financial data regarding the nation's external claims and liabilities. Form SLT was proposed and adopted to compile data on long-term cross-border investments and to assist the U.S. government with the formulation of U.S. international financial and monetary policies. All individual information reported on Form SLT will be maintained as confidential by the Treasury but aggregate data may be reported or otherwise published.

WHO MUST REPORT?

If they meet the other required elements, three types of U.S. residents will be required to submit Form SLT:

- Custodians. U.S.-resident custodians, including central securities depositories, that safekeep (a) U.S. securities on behalf of foreign residents or (b) foreign securities on behalf of U.S. residents;
- Issuers. U.S.-resident issuers of U.S. securities that are held directly or owned by foreign residents—i.e., no U.S.-resident custodian or U.S.-resident central securities depository is used; and
- End-Investors. U.S.-resident end-investors that directly hold foreign securities—i.e., where no U.S.-resident custodian or central securities depository is used.

Form SLT, like the other TIC forms, generally is designed to avoid duplicate reporting of securities holdings. Thus, as noted above, U.S.-resident issuers and end-investors, including private funds, are not required to report securities held through a U.S.-resident custodian. If a custodian is used, the requirement will fall to the custodian.

U.S. securities are defined as securities issued by a U.S. resident entity, and foreign securities are defined as securities issued by a non-U.S. resident entity. Residency is determined based on the entity's legal jurisdiction and not the actual location of the entity. Thus, limited partnership interests issued by a Delaware limited partnership would be considered U.S. securities, and limited partnership interests issued by a Cayman Islands exempted limited partnership would be considered foreign securities (regardless of the location of the sponsor of either such partnership).

WHAT IS THE FILING THRESHOLD?

Any U.S. resident described above must file a Form SLT if the value of its consolidated total holdings—aggregating the holdings of all affiliated entities (including all funds managed by the same fund manager or adviser)—of issued and outstanding reportable long-term securities is equal to at least \$1 billion at the close of any given month. Once the reporting threshold is reached, a Form SLT must be filed in every subsequent month for the remainder of the calendar year (even if the value of aggregate holdings drops below \$1 billion in a subsequent month).

In determining whether it exceeds the threshold, each U.S. resident must aggregate the value of reportable long-term securities it has *issued* with the value of reportable long-term securities it has *invested* in (assuming, in each case, that no U.S. custodian is involved). If the aggregated total meets or exceeds \$1 billion, the filing threshold will be triggered. For a private fund sponsor this requires aggregation of the value of fund investments made in foreign securities with the value of fund interests held by foreign investors, in each case based on the most recent fund valuations.

WHAT ARE REPORTABLE SECURITIES?

Reportable securities include both (i) equity interests, including common and preferred stock, limited partnership interests and fund shares, and (ii) long-term debt securities – defined as debt securities with an original maturity date in excess of one year.

Importantly, ownership scenarios where an investor owns a direct or indirect voting interest of 10% or more in a company (so-called “direct investments”) are specifically excluded from the reporting requirements.

WHAT INFORMATION MUST BE REPORTED?

Issuers. U.S.-resident issuers must report the fair market value of securities issued to non-U.S. residents, the country of residence of the non-U.S. resident and whether such investor is a “Foreign Official Institution,” as defined on the TIC forms.

Investors. U.S.-resident investors in foreign securities must report the fair market value of the foreign securities held, the country of residence of the foreign issuer and whether the securities are foreign government bonds, corporate or other bonds, or foreign equity securities.

WHEN IS REPORTING REQUIRED?

The new reporting requirement will become effective as of September 30, 2011. Reports will generally be required to be submitted by the 23rd calendar day of each month (or the first business day thereafter) following the month in which the reporting threshold is crossed. For 2011, however, reports are only required on a quarterly basis as of September 30 and December 31.

The first Form SLT will be due on October 24, 2011 (the 23rd is a Sunday).

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The Form SLT and related instructions are complex and subject to change. This alert provides a summary overview of the major requirements. Please feel free to contact us with any questions.

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