

TIC FORM SLT REPORTING REQUIREMENTS

In February 2011, the Department of the Treasury released the final instructions for the reporting requirements of the Treasury International Capital Form SLT (herein referred to as “Form SLT”). Form SLT will go into effect on September 30, 2011, and will have an initial due date of October 24, 2011. Very generally (and subject to further discussion below), Form SLT requires that U.S. resident entities report (a) all investments in foreign securities for their own portfolios or for the portfolios of their clients that are not held by U.S. resident custodians, as well as (b) all of their own securities that are held by foreign resident investors (other than through U.S. resident custodians), equal to, in the aggregate, \$1 billion or more.

Form SLT would thus apply to financial and non-financial organizations; managers of private and public pension funds, mutual funds and private investment funds or any other similarly pooled, commingled funds; foundations and endowments; and funds and other similar entities that either own shares or units of, or other equity interests in, a foreign related or non-related entity, or have their own shares or units, or other equity interests held by foreign related or non-related entities.

These Frequently Asked Questions highlight the general reporting requirements and answer some of the most common questions you may have with respect to Form SLT.¹

FORM SLT GENERALLY

WHAT IS THE PURPOSE OF FORM SLT?

Form SLT is a mechanism by which the U.S. Treasury can gather information on foreign-investor holdings of U.S. “long-term securities” (as defined below) and U.S.-investor holdings of foreign long-term securities, in a timely and reliable manner. This information is generally used to track capital flow in international capital markets, to construct international financial and capital market policy and to prepare the U.S. balance of payments accounts international investment position.

WHO MUST FILE FORM SLT?

Form SLT reports must be filed by financial and non-financial organizations; managers of private and public pension funds, mutual funds and private investment funds or any other similarly pooled, commingled funds; foundations and endowments; and funds and other similar entities that either own shares or units of, or other equity interests in, a foreign related or non-related entity, or have their shares or units, or other equity interests held by foreign related or non-related entities, that hold foreign long-term securities, or that have issued U.S. long-term securities held by foreign residents, that equal, in the aggregate, \$1 billion or more on the last business day of the reporting period. Such reportable securities would include long-term securities held by a U.S. based feeder fund in an offshore-based master fund. For example, if a U.S. resident fund holds \$500 million of foreign long-term securities and a foreign investor holds a \$500 million interest in the U.S. resident fund, a Form SLT reporting obligation would be triggered for the U.S. resident fund (or fund manager).

¹These Frequently Asked Questions are based upon information and research gathered from Form SLT, the Instructions to Form SLT, other documents related thereto and many oral discussions with personnel at the Federal Reserve Bank of New York (referred to herein as the “NY Fed”).

WHAT ARE LONG-TERM SECURITIES?

A long-term security is a debt or equity security with either no stated maturity or with an original maturity exceeding one year. Long term equity securities include limited partner interests, limited liability company interests, corporate shares and equity interests in funds and equivalent investment vehicles. Long term debt securities include bonds and notes, convertible bonds and debt with attached warrants, asset-backed securities and floating rate notes.

WHICH LONG TERM SECURITIES ARE REPORTABLE?

Reportable long term securities include: (1) U.S. securities held by U.S.-resident custodians on behalf of foreign residents; (2) foreign securities held by U.S.-resident custodians on behalf of U.S. residents; (3) U.S. securities issued by U.S. residents that are held directly by foreign residents; and (4) foreign securities that are held directly by U.S. residents.

HOW IS “RESIDENCY” DETERMINED?

For purposes of Form SLT, “residency” is determined by country of legal organization with respect to partnerships and trusts, by country of incorporation with respect to corporations, and by tax residency with respect to individuals.

HOW OFTEN MUST FORM SLT BE FILED?

Quarterly reports on Form SLT must be filed for the calendar quarters ending on September 30, 2011 and December 31, 2011 if, on the last business day of such quarter, the consolidated aggregate fair value of all reportable long-term U.S. and long-term foreign securities held is equal to \$1 billion or more. Starting in January 2012, a reporting entity or individual must file Form SLT for a reporting month (a calendar month) if, on the last business day of such month, the consolidated aggregate fair value of all reportable long-term U.S. and long-term foreign securities held is equal to \$1 billion or more. Once a U.S. resident entity has met the \$1 billion threshold for a reporting period and has begun to file Form SLT, it is obligated to continue to file for the remainder of the calendar year, regardless of the value of securities held in subsequent reporting periods.

WHEN MUST FORM SLT BE FILED?

Form SLT must be filed no later than twenty-three (23) calendar days following the last business day of the month with respect to which the Form SLT is required to be filed. If the due date of the report falls on a weekend or a holiday, Form SLT must be filed on the following business day.

HOW MUST DATA BE REPORTED ON FORM SLT?

Form SLT requires that the reportable securities be reported, in the aggregate, on a “country by country” basis, based upon the country or geographical area in which the foreign-resident issuer of the foreign securities or the foreign-resident holder of the U.S. securities resides. Thus, securities held do not have to be reported on a “fund by fund” or an “investor by investor” basis.

Form SLT requires reporting of the fair value of securities as of the last business day of the month. Additionally, any security not denominated in U.S. dollars must be converted to U.S. dollars using the spot exchange rate as of close of business on the last business day of such reporting month.

FORM SLT AND PRIVATE INVESTMENT FUNDS

ARE ANY TYPES OF SECURITIES EXEMPTED FROM REPORTING ON FORM SLT?

In addition to the general exemption for U.S. resident entities with less than \$1 billion in aggregate reportable securities, certain categories of securities do not have to be reported on Form SLT, including: (a) short term securities, (b) derivative contracts, (c) loan and loan participation certificates, (d) letters of credit, (e) precious metals and currencies held in the reporter's vaults for foreign residents, (f) bank deposits, (g) annuities (including variable rate annuities), (h) securities taken in as collateral and (i) "direct investments." "Direct investment" holdings arise when a U.S. resident owns a 10 % or more direct or indirect voting interest in any foreign company; or when a foreign resident owns a 10% or more direct or indirect voting interest in a U.S. entity.²

Pursuant to the Instructions, purchases and sales of limited partner interests do not fall within the "direct investment" exception because limited partner interests do not carry voting rights. However, purchases and sales of interests in private investment funds organized as other types of entities (for example, as corporations) that do carry voting rights could meet the definition of "direct investment" assuming the ownership threshold is met. Additionally, general partner ownership interests are always considered to be direct investments and do not need to be reported on Form SLT.³

MUST FUND MANAGERS REPORT INVESTMENTS BETWEEN U.S. AND FOREIGN-RESIDENT AFFILIATE FUNDS THAT THE MANAGER SETS UP?

Investment advisers and fund managers that create master-feeder funds both outside and inside the U.S. should report any investments between the U.S. and foreign-resident affiliate funds. Such investments are "portfolio investments" and must be reported on Form SLT.

Investment advisers and fund managers do not need to report any investments between itself (or other entity that forms funds, as a general partner) and all the entities it creates, because such investments are categorized as "direct investments."

² "Direct investment" interests may need to be reported separately on Direct Investment Surveys from the U.S. Bureau of Economic Analysis.

³ As an example, a fund manager creates a Cayman Master Fund, a Cayman Feeder Fund and a U.S. Feeder Fund. The investments between the U.S. manager and the Cayman funds are direct investments (because the manager controls them). However, investments the U.S. feeder fund has in the Cayman Master Fund are counted towards the \$1 billion threshold for purposes of Form SLT reporting. Additionally, the purchases and sales of such investments may need to be reported on Form S (a Treasury report that relates to the reporting of cross-border transactions and cash flows and has a \$50 million reporting threshold). The value of the securities held should be reported on Form SLT.

ADMINISTRATIVE REPORTING REQUIREMENTS

HOW DOES A U.S. RESIDENT FILE A FORM SLT?

If a U.S. resident believes that it should be reporting on Form SLT, it must first contact the NY Fed to obtain a reporter ID.⁴

U.S. resident issuers and U.S. resident end investors should file their Form SLT reports with the Federal Reserve Bank of New York, regardless of where they are located. Form SLT may be filed (i) by using the Internet Electronic Submissions System (the method encouraged by the NY Fed) or (ii) by mail or fax on a paper TIC Form SLT. Any reporter wishing to submit its Form SLT via the Internet Electronic Submissions System should complete a "User Request Form" and fax such User Request Form to the NY Fed. Upon receipt of the User Request Form, the NY Fed will issue the requesting reporter a User ID and password for the Internet Electronic Submissions System. Information on requirements and enrollment in this electronic system is available at <http://www.frbervices.org/centralbank/reportingcentral/iesub.html>.

CAN A U.S. RESIDENT FILE A CONSOLIDATED FORM SLT?

For purposes of Form SLT, entities should generally consolidate all of their subsidiaries, except for foreign-resident offices and subsidiaries, in accordance with U.S. GAAP. Additionally, a U.S. resident investment advisor or fund manager should file one report of the holdings and issuances for all U.S. resident parts of its own organization and for all of the U.S. resident entities it manages, on a consolidated basis (irrespective of U.S. GAAP consolidation).⁵ As an example, if several U.S. resident funds are managed by the same U.S. resident fund manager, the fund manager must file a Form SLT to the extent the funds hold long-term foreign securities meeting or exceeding the \$1 billion threshold, on a consolidated basis. It is irrelevant whether each (or any) of the funds individually would exceed such a threshold.

HOW CAN A FORM SLT BE AMENDED OR REVISED?

Revised reports may be submitted either (1) by using the Internet Electronic Submission System, in which case an International Reports Division analyst must be contacted before the revised submission is made, or (2) on a paper TIC Form SLT with the word "Revised" included in the letterhead. The revised submission should also include the report cycle date, name of country to be revised and the revised amount. The revision must also be signed by an authorized person.

HOW LONG MUST FORM SLT BE RETAINED BY THE REPORTER?

Reports must be retained for at least three (3) years from the date of submission to the NY Fed.

⁴ The contact number for the NY Fed is (212) 720-6357.

⁵ Please see Section II.B of the Instructions to Form SLT for more consolidation rules and more information on the consolidation rules.

WHAT ARE THE PENALTIES FOR FAILURE TO FILE FORM SLT?

Failure to report can result in a civil penalty of at least \$2,500 and at most \$25,000, with respect to each month of noncompliance.⁶ Willful failure to report can result in criminal penalties, including a fine of at most \$10,000 and imprisonment for no more than one year. An officer, director, employee, or agent of an entity who knowingly participates in the willful failure to report can also face these criminal penalties.⁷ Penalties for failure to file are applicable only to the U.S. resident entity or individual with the obligation to file a Form SLT.⁸ All penalties (incurred through willful misconduct or otherwise) are assessed separately with respect to each instance of noncompliance.

IS THE INFORMATION REPORTED ON FORM SLT MADE PUBLICLY AVAILABLE?

Data reported on Form SLT is treated as confidential by the U.S. Treasury, the Board of Governors of the Federal Reserve System, and the Federal Reserve Banks (acting as fiscal agents of the U.S. Treasury) and the information reported by a U.S. resident will not be published or publicly disclosed. Therefore, while data reported on Form SLT may be aggregated for purposes of published reports, specific data reported by any individual reporter will not be made publicly available.

HOW DOES FORM SLT RELATE TO TIC FORM S AND THE BE FORMS REQUIRED BY THE BUREAU OF ECONOMIC ANALYSIS?

Form S is used to report cross-border transactions and cash flows to the U.S. Treasury (see footnote 3), whereas the BE series of forms are used to report “direct investment” interests to the Bureau of Economic Analysis (see footnote 2), which investments are exempted from Form SLT reporting.

For additional information and guidance, Form SLT is available at <http://www.treasury.gov/resource-center/data-chart-center/tic/Documents/fslt.pdf> and the Instructions to Form SLT are available at <http://www.treasury.gov/resource-center/data-chart-center/tic/Documents/sltinstr.pdf>.

If you have any questions about Form SLT or the reporting requirements, please contact your Ropes & Gray attorney.

6 31. C.F.R. § 128.4(a).

7 31. C.F.R. § 128.4(b).

8 See Section I.B of the Instructions for additional information relating to penalties for noncompliance.