

Upcoming TIC Form B Filing Deadline

The U.S. Department of Treasury recently amended the Treasury International Capital Form B (“Form B”), which imposes reporting obligations on some investment advisers to private funds. Form B generally requires the reporting of information on certain “claims” and “liabilities” (including loans, short-term securities and other short-term debt and debt instruments) of non-U.S. entities with U.S. banks, bank holding companies and financial holding companies, securities brokers and dealers and other U.S. financial institutions.

With respect to private funds, filing obligations would most commonly arise with respect to funds that (1) invest directly in non-U.S. debt instruments, (2) provide credit to non-U.S. entities, (3) directly hold non-U.S. short-term securities, or (4) maintain credit facilities with non-U.S. financial institutions. Notwithstanding the foregoing, any claims or liabilities that are serviced by a U.S. entity, or any claims or liabilities for which a U.S. custodian or U.S. subcustodian is used do not need to be reported by the investment adviser. Therefore, to the extent any short-term securities, debt instruments, or other reportable claims or liabilities are held with a U.S. custodian or U.S. subcustodian, such amounts are not reportable on Form B by an investment adviser. More information about the Form B reports, the various thresholds and a more detailed description of reportable “claims” and “liabilities” may be found in our previous [Alert](#) (see “NY Fed Revises TIC Form B Reporting Requirements”).

Prior to the revisions, Form B was not required to be filed by private funds or investment advisers; however the amended rules now provide that Form B must also be filed by “all other U.S. financial institutions that are primarily engaged in proprietary investments and/or the provision of financial services to other organizations.” The Federal Reserve Bank of New York (the “NY Fed”), in its revised instructions to Form B, specified that “all other financial institutions” include (among other entities) private equity funds, hedge funds, real estate investment trusts, mutual funds and pension funds.

The NY Fed provided additional guidance this week with respect to private funds, including investment adviser filing requirements and consolidation rules. Very generally, the NY Fed clarified that U.S. funds should not report on their own behalf. Instead, to the extent reportable claims and liabilities exist, investment advisers should consolidate and report all U.S. fund claims on foreign residents and U.S. fund liabilities to foreign residents on behalf of the U.S. funds they manage. Additionally, U.S. investment advisers should report foreign fund claims on U.S. residents (if the U.S. counterparty is not subject to the Form B filing requirements) and foreign fund liabilities to U.S. residents (if the U.S. counterparty is not subject to the Form B filing requirements) on behalf of the non-U.S. funds they manage.

Investment advisers would be required to report this information on various monthly and quarterly reports. **The first monthly report is due on January 15, 2014 and the first quarterly report is due on January 20, 2014, and in each case, information should be reported as of December 31, 2013.** While the NY Fed is pushing for Form B filers to make their filings by the deadline, they are also encouraging potential reporters to contact them in the event they will require an extension for filing and to work out more appropriate deadlines based on each potential filer’s facts and circumstances.

Please contact your usual Ropes & Gray advisor with any questions.