

September 15, 2020

Upcoming Deadline for Form BE-180

The U.S. Department of Commerce, through the Bureau of Economic Analysis (the “BEA”), requires U.S. financial services providers that had financial services transactions with foreign persons in excess of \$3 million during their 2019 fiscal year to file a report on Form BE-180 (a “BE-180 Filing”). The BE-180 Filing is a five-year benchmark survey and is due September 30, 2020 for paper filers and October 30, 2020 for electronic filers. Unlike certain other filings required by the BEA, any U.S. person that is a financial services provider and that satisfies the reporting threshold (referred to as a “U.S. Reporter”) is required to make a BE-180 Filing, regardless of whether the BEA has contacted such person.¹

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Accordingly, investment advisers, general partners and the funds they advise may be required to make a BE-180 Filing as a result of several common scenarios, including (1) a U.S. investment adviser receiving advisory fees from a non-U.S. fund or separate account; (2) a U.S. general partner receiving carried interest or other performance allocation from a non-U.S. fund; and (3) a U.S. fund paying fees to non-U.S. financial service providers (such as custodians or broker dealers). The reporting thresholds and practical implications for asset managers are discussed below in more detail.

Reporting Threshold

A U.S. person (including an individual or an entity) is required to make a BE-180 Filing if the U.S. person (1) is a “Financial Services Provider” **and** (2) had either combined sales to, or combined purchases from, foreign persons of “Financial Services” that exceeded \$3 million during its 2019 fiscal year.

The BE-180 instructions define a “Financial Services Provider” by reference to those entities that fall within North American Industry Classification System (NAICS) Sector 52—Finance and Insurance. In addition, the instructions provide a lengthy list of examples of a “Financial Services Provider,” including persons engaged in the following industries, among others: financial investment activities (including portfolio management, investment advice, and all other financial investment activities), investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts and other financial vehicles), and holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

The BEA’s categories of “Financial Services” are very broad and include financial management and advisory services, brokerage services, private placement and underwriting services, credit-related services and custody services, and certain other financial services.

A U.S. enterprise is expected to file a single BE-180 Filing covering combined Financial Services transactions of all its controlled domestic subsidiaries that are Financial Services Providers. Accordingly, in determining whether the \$3 million threshold is exceeded, the U.S. Reporter must include in its calculation all Financial Services transactions of the “consolidated U.S. enterprise” of which it is a part.² This calculation does not include the value of any securities purchased or sold in connection with any Financial Services transactions or the earnings of principals from buying and

¹ In addition, any U.S. person that has received a request for a BE-180 Filing but does not meet the requisite thresholds is required to make a partial BE-180 Filing.

² Consistent with other BEA forms, a Financial Service Provider’s “consolidated U.S. enterprise” includes any U.S. corporation, proceeding up the Financial Services Provider’s ownership chain, that owns more than 50 percent of the voting securities of the corporation below it, and any U.S. corporation, proceeding down the ownership chain(s) of each of these corporations, whose voting securities are more than 50 percent owned by the U.S. corporation above it. This consolidation applies to both incorporated and unincorporated entities.

selling financial instruments. Rather, the amounts to be reported are limited to payments and receipts for Financial Services themselves. The BE-180 does not provide for any exemptions or exclusions for transactions with affiliates, and transactions should be reported regardless of whether the service was performed in the United States or abroad and whether the service was performed in person or remotely.

The BEA has indicated that the determination of whether a U.S. person has a BE-180 Filing obligation may be based on the “judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.”

Practical Implications for Asset Managers

As noted above, the activities of investment advisers, general partners and the funds they advise, both private and registered, may constitute reportable Financial Services transactions in several common scenarios, including but not limited to the following:

1. a U.S. investment adviser to a non-U.S. fund or separate account has sales of Financial Services when it earns advisory fees from such non-U.S. fund or separate account as compensation for financial advisory or management services;³
2. a U.S. general partner (or managing member or similar) to a non-U.S. fund has sales of Financial Services when it earns carried interest or other performance allocations or incentive fees from such non-U.S. fund as compensation due to fund performance;⁴ and
3. a U.S. fund has purchases of Financial Services when it owes fees to a non-U.S. investment adviser, custodian, or broker-dealer for financial advisory, custodial or brokerage services.

Content of Form BE-180

U.S. Reporters will be required to provide aggregate data on total sales and/or purchases of each of the covered types of Financial Services transactions. In addition, U.S. Reporters are required to disaggregate the totals by, among other things, country of the counterparty, relationship to the foreign person (whether affiliated or unaffiliated), and category of Financial Service provided by the financial services provider.⁵ The BEA reports are kept confidential, are not subject to Freedom of Information Act (FOIA) requests and are solely used for statistical analysis. The 2019 BE-180 form and related guidance are available [here](#).

If you have questions regarding the application of these filing requirements, please contact your usual Ropes & Gray advisor.

³ Note that fees charged by a U.S. adviser to a U.S. fund would not need to be reported solely because that U.S. fund has non-U.S. investors unless the fee is charged *directly* to the foreign investor and not to the fund itself.

⁴ The BEA has clarified in an FAQ that profit allocations are reportable because they represent compensation due to fund performance.

⁵ If actual figures are not available, the BEA permits U.S. Reporters to supply estimated figures, so long as they are labeled as such.