

Investment Funds Alert

Upcoming Compliance Deadline: Foreign Security Ownership Reporting on Form SHC

February 24, 2012

The Department of the Treasury's Treasury International Capital System (TIC) Form SHC¹ regime requires (i) United States-resident owners of foreign securities, such as United States-organized investment funds and United States-organized managers (each, an "End-Investor") and (ii) United States-organized custodians to file Form SHCs if they have received a letter from the Department of the Treasury requesting them to file or if they own, manage or hold at least \$100 million in equity securities, short-term debt securities or long-term debt securities issued by entities organized outside the United States (the "Reportable Securities") (other than "direct investments"²) that would be required to be disclosed on Schedule 2 or Schedule 3 as described below. Contrary to the case with TIC Form SLT, the fact that a United States custodian holds the securities does not relieve an End-Investor from reporting on Form SHC. Instead, the End-Investor must report custodians that hold at least \$100 million in foreign securities on their behalf. As with the Form SLT regime, Form SHC will commonly apply to investment funds that are investing in foreign Reportable Securities, including partnership interests in a master fund organized outside of the United States. Persons subject to the Form SHC regime must make a confidential filing with the Department of the Treasury through the New York branch of the Federal Reserve Board System by March 2, 2012. Form SHC filings are made once every five years, but certain large filers will be required to file the annual Form SHCA in 2013. The forms will be used for aggregating information on foreign investment by United States persons.

Layout of the Form and Reporting Thresholds

The form itself is divided into three schedules. All persons filing Form SHC are required to complete Schedule 1, which contains identifying information, a description of the filer and valuation techniques the filer employs and a summary of the information in Schedules 2 and 3. Schedule 2 requests information regarding foreign securities that (i) the End-Investor keeps for itself or its United States resident or organized clients, (ii) the End-Investor maintains through a non-United States custodian or (iii) are the types of instruments for which there is no United States custodian to manage their safekeeping. A separate Schedule 2 is required to be filed for each Reportable Security, but no Schedule 2 need be filed if the total fair value of the securities that would be reported would not equal or exceed \$100 million. Schedule 3 requires filers to report any United States-organized custodian through which it holds at least \$100 million in Reportable Securities. In order to compute the above \$100 million exclusion, an End-Investor must consolidate the fair value of the Reportable Securities that are either owned by United States-organized entities either managed or sponsored by the same End-Investor or owned by the same United States-organized parent entity as of the last day of December 31, 2011. Each schedule requires the input of codes found on the report itself or the appendices to the instructions.

¹ Requirements to file other Treasury forms, such as TIC-S, TIC SLT and TIC SHL, continue to apply.

² "Direct investments" (ownership interests of 10 percent or more of voting securities) are not Reportable Securities. Limited partnership interests, however, are not voting securities under the Form SHC regime and may not be excluded as a "direct investment." Direct investments must be reported under the more onerous reporting regime of the Bureau of Economic Analysis. The form also specifically excludes derivatives, loans and loan participation certificates, among other interests, from Reportable Securities.



Examples of Reporting Under Form SHC

Investment Advisers

United States-organized investment advisers are required to file one consolidated report relating to the holdings and issuances of all United States funds they manage or sponsor and United States-resident managed accounts that they manage that own Reportable Securities. Therefore, investment advisers must use the consolidated amount of Reportable Securities as measured across its United States fund clients for determining whether they satisfy the \$100 million threshold for each Schedule. If the investment adviser is not organized in the United States, each United States-organized fund would need to independently analyze if it equals or exceeds the \$100 million reporting threshold. Many United States investment advisers that advise funds organized in a master-feeder structure will be required to report foreign master fund interests owned by a domestic feeder fund. Other examples of securities that investment advisers may be required to report include (i) ownership of Reportable Securities held by United States-organized funds through non-United States custodians on Schedule 2 and (ii) the name of each United States custodian through which the End-Investor holds at least \$100 million in Reportable Securities. Foreign securities owned by a master fund organized outside of the United States would not have to be reported even if a domestic feeder fund invests in the master fund, although the domestic feeder's investment in the foreign master fund may be reportable.

Preparation for Filing

Persons that are required to file Form SHC should begin completing their Form SHC in preparation for the March 2 deadline and ensure that they have the requisite 10-digit ID number assigned by the Federal Reserve Bank of New York as soon as possible.³ For further information regarding Form SHC, the TIC Form SHC itself and the instructions are available here. Persons reporting fewer than 200 positions may file in paper. Persons reporting 200 or more positions must submit their reports on diskette or CD or through the Federal Reserve Board System's Internet Electronic Submission System (IESUB).

CONTACT INFORMATION

If you have any questions concerning this alert, please contact—

Mark H. Barth
mbarth@akingump.com
212.872.1065
New York

David M. Billings
dbillings@akingump.com
44.20.7012.9620
London

Jason M. Daniel
jdaniel@akingump.com
214.969.4209
Dallas

Robert M. Griffin
bgriffin@akingump.com
971.2.406.8500
Abu Dhabi

Prakash H. Mehta
pmehta@akingump.com
212.872.7430
New York

Eliot D. Raffkind
eraffkind@akingump.com
214.969.4667
Dallas

Fadi G. Samman
fsamman@akingump.com
202.887.4317
Washington, D.C.

Simon Thomas
swthomas@akingump.com
44.20.7012.9627
London

Stephen M. Vine
svine@akingump.com
212.872.1030
New York

Ying Z. White
ywhite@akingump.com
86.10.8567.2212
Beijing

³ Filers may obtain an ID by calling 212-720-6300 or e-mailing SHC.HELP@NY.FRB.ORG.