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New U.S. Treasury Form SLT Applicable to Investment Advisers

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Commencing June 30, 2011, the U.S. Department of the Treasury is implementing a new reporting requirement regarding cross-border ownership of “long-term” securities that will apply to, among others, U.S. investment advisers and U.S.-resident funds (including those managed by non-U.S. investment advisers). The new report will be filed on a confidential basis with the Federal Reserve Bank.

The “TIC Form SLT” report (“Form SLT”) will apply to all U.S.-resident custodians (including U.S.-resident banks), U.S.-resident issuers (such as a U.S. fund) and U.S.-resident end-investors (such as a U.S. investment adviser, whether or not registered). To be subject to reporting, a reporting person must have consolidated reportable holdings and issuances with a fair market value of at least $1 billion as of the last business day of any month.

In calculating the consolidated reportable holdings and positions:

U.S.-resident custodians should aggregate:

- U.S. securities custodied on behalf of non-U.S. residents; and
- Non-U.S. securities custodied on behalf of U.S. residents.

U.S.-resident issuers or end-investors should aggregate:

- U.S. securities that are issued by U.S.-resident issuers and held directly by non-U.S. residents (where no U.S.-resident custodian or U.S.-resident central securities depository is used); and
- non-U.S. securities that are held directly by U.S.-resident end-investors (where no U.S.-resident custodian is used).

For U.S.-resident holdings of non-U.S. securities, the reporting party would be required to disclose:

(i) the residence of the non-U.S. issuer; and

(ii) the fair market value and type of non-U.S. security.

For non-U.S.-resident holdings of U.S. securities, the reporting party would be required to disclose:

(i) the non-U.S. holder's residence;

(ii) the fair market value and type of U.S. security; and

(iii) whether the non-U.S. holder is a "foreign official institution" (including national governments, international and regional organizations and sovereign wealth funds).

Form SLT will be due on a quarterly basis for 2011. In 2012, the report will become a monthly report that must be filed by the 23rd calendar day following the end of each month. If the $1 billion threshold is crossed as of the end any month, the reporting person will have to file Form SLT for all remaining months in that calendar year.

Most equity securities and debt securities with a maturity of greater than one year are considered long-term securities for the purposes of the Form. Certain types of securities are excluded, including: short-term securities (original maturity of one year or less); bankers' acceptances and trade acceptances; derivative contracts (including forward contracts to deliver securities); loans and loan participation certificates; letters of credit; bank deposits; and annuities.

All U.S.-based investment advisers with aggregate holdings of "reportable long-term securities" with a fair market value of at least $1 billion by the adviser and its clients are likely to be subject to Form SLT reporting. An investment adviser that is subject to the reporting requirement will file one consolidated report for all U.S.-resident parts of its organization and all U.S.-resident entities that it advises. Funds organized under the laws of any U.S. State are included in the "U.S.-resident" portion of a reporting investment adviser's organization, which will subject securities issued by non-U.S. master funds that are held by U.S. feeder funds and holdings of U.S. master fund securities by non-U.S. feeder funds to reporting.

While the instructions to Form SLT provide specific guidance on the reporting of fund securities, there are numerous issues that are not addressed. For example:

- “direct investments,” where a U.S. resident owns a direct or indirect voting interest of 10% or more in a non-U.S. company or a non-U.S. resident owns a direct or indirect voting interest of 10% or more in a U.S. company, should be excluded from the report. However, it is not clear whether “direct investment” would include a U.S. feeder fund that holds 10% or more of the voting shares of a non-U.S. master fund.

- non-U.S. securities held by a U.S.-resident investment adviser for its own portfolio or for the portfolios of its clients that are held by U.S.-resident custodians should be excluded from the report. However, it is not clear whether an investment adviser should include or exclude such securities in determining whether the adviser meets the $1 billion threshold for reporting.

Assuming that the final form and instructions are approved by the Office of Management and Budget (which is generally a formality), the first reporting deadline for Form SLT will be July 25, 2011. We will continue to monitor developments with respect to the reporting regime, and we will provide updates if any additional guidance is provided.

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