

Legal Update

New Form SLT Reporting Requirement Applicable to Certain Large Fund Managers

October 2011

Summary: Form SLT is a new form issued by the Department of Treasury as part of the Treasury International Capital (“TIC”) reporting regime. The stated purpose of Form SLT is to enable the Department of Treasury to collect data about certain cross-border investments (i.e., investments in foreign securities by US persons and investments in US securities by foreign persons). Form SLT is required to be filed with the Federal Reserve Bank of New York. The first filing of Form SLT is due by October 24, 2011. This newsletter discusses Form SLT as it applies to fund managers.

As a practical matter, only certain large fund managers will be required to file Form SLT. The filing requirement can apply to US managers and can also apply to non-US managers (that have US funds). A fund manager will be required to file Form SLT if it meets a \$1 billion threshold for “reportable securities” (determined on a consolidated basis). Because many types of investments are excluded from the definition of reportable securities or are reportable by persons other than the fund managers, many fund managers, including many fund managers which would otherwise be considered large fund managers, may not exceed the \$1 billion threshold and would not be

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required to file Form SLT. For the October 24, 2011, filing deadline, fund managers need to determine whether they are required to file Form SLT based on the values of their holdings as of September 30, 2011. Actual securities are not reported on Form SLT. Rather, positions are grouped by country and type of securities.

Form SLT seeks to capture information regarding (1) foreign securities held by domestic funds, (2) US securities held by foreign funds, (3) foreign investors in US funds, (4) US feeder funds investing in offshore master funds, and (5) foreign feeder funds investing in US master funds.

Timing: The first filing deadline for Form SLT is October 24, 2011, for the quarter ending September 30, 2011. The next filing deadline will be January 23, 2012, for the quarter ending December 31, 2011. Thereafter, Form SLT is due on the 23rd day after the end of each month (or the next business day if the 23rd is a Saturday, Sunday or holiday) based on holdings as of the last day of the preceding month. Form SLT can be filed electronically or by fax or mail.

Who the Form applies to: Generally, a US fund manager would be responsible for filing Form SLT and would file on a consolidated basis based on the holdings of all funds and accounts that it manages. Form SLT applies to three categories of persons.

US-resident custodians. A US-resident custodian means a US person that is a “bank or other entity that manages or administers the custody or safekeeping of securities ... or other assets for institutional or private investors.” US-resident custodians would generally include banks or prime brokers where securities are held. A US manager may also be deemed to be a US custodian where securities are held in the manager’s name, rather than in a fund name (i.e., because of how the securities are held, the US manager is the only party that knows that securities are owned by foreign persons). US-resident custodians must report US securities held for foreign persons and foreign securities held for US persons.

US-resident issuers. US resident-issuers generally include US funds (because securities include interests in a US limited partnership). US-resident issuers must report all securities issued directly to foreign investors.

US-resident end-investors. US-resident end-investors generally include a fund manager and US funds. US-resident investors must report all investments in foreign securities for their own portfolios or the portfolios of their clients that are not held by US-resident custodians.

\$1 billion threshold: The reporting requirement only applies to persons who have at least \$1 billion of reportable securities. This applies on a consolidated basis and is on a gross basis, not a net basis. Once a person is required to file for a month, it must continue to file for the rest of the calendar year even though the person may no longer meet the threshold requirement.

Reportable securities: There are many exceptions to what are considered reportable securities. From a fund manager's perspective, reportable securities does not include securities held at a US custodian in the name of a fund (the US custodian would generally be required to report these) and does not include US securities (other than interests in a domestic fund) issued to a foreign person that are held in the name of the foreign person (the US issuer would generally be required to report these).

Stocks, debt instrument with a term of more than one year, and limited partnership interests are reportable securities. Depositary receipts/shares are also reportable securities.

Short-term securities (original maturity of less than 1 year), bankers' acceptances, trade acceptances, derivative contracts (including swaps and forward contracts), loans (i.e., directly negotiated obligations), loan participations, letters of credit, bank deposits, direct interests in precious metals, annuities and short positions are not reportable securities. "Direct investments", which are 10% or greater voting interests in a company, are also not reportable securities (on the theory that such securities would generally be required to be reported on Bureau of Economic Affairs reports).

Confidential: The data on Form SLT is confidential. However, aggregated data may be published.

Basic Analytical Approach for a Fund Manager:

(i) If you manage less than \$1 billion (on a gross basis), Form SLT generally should not apply to you. (A manager could exceed the \$1 billion threshold in odd circumstances such as \$500 million invested by a domestic fund in an offshore master fund and the master fund owns \$500 million of domestic securities, all of which are reportable securities.) If you do, then determine whether Form SLT applies to you.

(ii) Form SLT has two parts, Part A and Part B. The manager will report on Part A any US reportable securities held in the manager's name on behalf of a foreign fund. A domestic fund will report on Part B any foreign reportable securities owned

by the domestic fund which are not held by a US custodian and any direct foreign ownership in the domestic fund.

(iii) Identify if there are any direct foreign owners of the domestic fund (whether a standalone, feeder or master fund). Identify the domestic feeder fund's investment in the offshore master fund and the foreign feeder fund's investment in a domestic master.

(iv) Identify which securities are held at US resident custodians in the name of the funds. These would not be reportable securities.

(v) Identify which of the remaining securities are reportable securities.

(vi) Of the remaining securities, identify which securities are foreign securities held by a domestic fund and which securities are US securities held by a foreign fund.

(vii) Identify securities by type of security.

(viii) Identify securities by country.

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