

Client Alert

Latham & Watkins Corporate Department

US Investment Managers, Financial Institutions and Others Must File Treasury Form SHC By March 2

Various US-resident investment managers, custodians and other end-investors (including financial and non-financial organizations such as banks, broker-dealers, insurance companies, foundations and others) are required to submit Treasury Form SHC (Report of US Ownership of Foreign Securities, Including Selected Money Market Instruments) (Form SHC) on or before March 2, 2012. Some investment managers, custodians and other end-investors have been notified of this requirement by the Federal Reserve Bank of New York (FRBNY). Others may also be required to submit Form SHC as a result of their holdings of foreign securities, even absent any notice from the FRBNY.

Form SHC is a mandatory quinquennial benchmark survey issued by the US Department of the Treasury (Treasury) to collect data regarding US ownership of foreign securities. The data collected on Form SHC every five years is used by the government to consider the international investment position of the US and to formulate international economic and financial policies. The following is a high-level summary of the reporting requirements for Form SHC.

Who Is Required to File?

All US-resident¹ investment managers, custodians and other end-investors² notified by the FRBNY that they are required to file Form SHC must file, regardless of whether they surpass the exemption threshold described below. All other US-resident investment managers, custodians and other end-investors whose holdings of foreign securities equaled or exceeded \$100 million in fair value³ on December 31, 2011 are also required to file Form SHC. In general, the top-level US parent entity in each such organization must file a consolidated report on behalf of all US subsidiaries in its organization. Similarly, investment managers file one consolidated report in respect of the holdings of foreign securities by all US funds that they manage.

What Must Be Reported?

Form SHC collects data regarding all US-resident holdings of securities issued by entities established under the laws of a foreign country and by international or regional organizations. Such securities include all equity interests, short-term debt securities (including certain money

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market instruments) and long-term debt securities. Direct investments are specifically excluded from filing requirements.⁴

Form SHC requires all filers to provide information regarding (1) the identity and contact details of the filing entity, (2) the aggregate dollar value of foreign securities holdings, broken out according to type of security and (3) the valuation methodologies used by the filing entity to determine the fair value of securities. Entities surpassing the \$100 million threshold described above must file additional schedules providing detailed information in respect of each foreign security owned by the reporting entity and its aggregated US subsidiaries and managed funds. This additional detail includes information such as the name, country of origin and fair value of each foreign security.

Timing and Mechanics of Filings

Filers must report data regarding foreign security holdings as of December 31, 2011 and must submit Form SHC on or before March 2, 2012. Required reports must be submitted to the FRBNY electronically, via mail or fax. All data reported on Form SHC is purported to be confidential and is not intended to be published or disclosed other than to the Board of Governors of the Federal Reserve System. In addition, the FRBNY has advised that this data is not subject to Freedom of Information Act disclosure. According to Treasury's Form SHC instructions, all data provided to Treasury or to other federal agencies will be provided on an aggregate basis such that it cannot be traced to any individual filer.

Failure to File

Failure to file Form SHC may result in monetary penalties, imprisonment or both.

Conclusion

Form SHC will require thorough and detailed internal data collection and analysis by many investment managers and other financial and non-financial organizations. Form SHC and the corresponding instructions can be found at <http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-sh.aspx#shc>.

Endnotes

- ¹ For purposes of Form SHC, a US resident is any entity that is legally established in any jurisdiction in the United States, without regard to the location of such entity's corporate headquarters or the physical location of the business.
- ² Treasury defines end-investors as "US-resident organizations that invest in foreign securities for their own portfolios or invest on behalf of others, such as investment managers and fund sponsors." End-investors are also stated to include financial and non-financial organizations (including banks, broker-dealers and other financial intermediaries), managers of private and public pension funds, insurance companies, foundations, institutions of higher learning, trusts and estates and others.
- ³ Fair value for purposes of Form SHC is generally determined in accordance with ASC 820.
- ⁴ Form SHC defines a "direct investment" as the ownership of 10 percent or more of the voting equity interests in an entity. All general partner investments are considered direct investments, as general partners are presumed to have control over the entity. Limited partner interests, even those greater than 10 percent, are not considered to be direct investments as limited partners are presumed to have no control over the entity.

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