



Upcoming Deadline for Form SHC

Investment managers that hold non-U.S. securities (including interests in offshore master funds) for their own accounts or the accounts of their U.S. clients and funds may be required to file Treasury International Capital Form SHC (“Form SHC”) with the Federal Reserve Bank of New York. Form SHC is part of a survey held every five years to collect data on U.S. investors’ holdings of non-U.S. securities, including foreign equities, long-term debt, short-term debt and asset-backed securities (“Foreign Portfolio Securities”). The form must be filed by March 3, 2017. Form SHC and its instructions are included in the [Form SHC Quinquennial Report to the Federal Reserve Bank of New York](#) available at www.treasury.gov.

A U.S. investment manager must file a Form SHC if (1) it is notified by the Federal Reserve Bank of New York that it is required to do so, or (2) either of the following thresholds is met:

- (a) The total fair value of all Foreign Portfolio Securities that (i) the U.S. manager holds directly for itself or for its U.S. clients, or (ii) non-U.S. custodians or a U.S. or non-U.S. central securities depositories (such as Depository Trust and Clearing Corporation) hold on behalf of the U.S. manager or its U.S. clients, is at least \$200,000,000 as of December 31, 2016; or
- (b) The total fair value of all Foreign Portfolio Securities that an unaffiliated U.S. custodian holds on behalf of the U.S. manager and its U.S. clients is at least \$200,000,000 as of December 31, 2016.

In calculating the \$200,000,000 threshold, a U.S. manager must aggregate all Foreign Portfolio Securities held or managed by its U.S. branches and subsidiaries. Interests in a foreign fund generally will be considered Foreign Portfolio Securities and must be included in the \$200,000,000 calculation. Accordingly, a U.S. manager with a U.S. feeder fund and a foreign master fund (such as a Cayman Islands limited partnership) must count the value of the U.S. feeder fund’s interest in the master fund towards the \$200,000,000 threshold ((a)(i) above).

If a U.S. manager manages U.S. funds or separate accounts that hold Foreign Portfolio Securities valued at \$200,000,000 or more, it should review Form SHC carefully to determine whether it is required to file the Form. Based on our experience, we believe the filing requirement will most likely apply to U.S. managers in one of two ways. First, a U.S. manager is required to file under (a)(i) if it advises a master-feeder fund in which the value of the U.S. feeder fund’s interest in the foreign master fund, together with any other Foreign Portfolio Securities it directly holds, is at least \$200,000,000. If the manager advises multiple master-feeder funds with foreign master funds, it must aggregate the value of all of the U.S. feeder funds’ interests in their respective master funds for purposes of determining if this threshold is met. Second, a U.S. manager is required to file under (b) if its U.S. funds, plus any separate accounts it manages, own Foreign Portfolio Securities with an aggregate value of at least \$200,000,000 with the same U.S. custodian.

Direct investments are not required to be reported on Form SHC. “Direct investments” include (1) any general partner interest in a foreign limited partnership and (2) ownership of 10% or more of the voting equity securities of a foreign incorporated entity, or an equivalent interest in an unincorporated foreign business. For example, a U.S. manager that manages a U.S. fund or separate account that owns 10% or more of the voting securities of a foreign corporation does not need to include the value of that position in its \$200,000,000 threshold calculation. These direct investments are not included on Form SHC because they may be reported on other Treasury International Capital forms.

There are significant penalties for failing to file Form SHC, including civil fines of up to \$25,000 and potential criminal penalties.

If you have any questions regarding your possible filing obligations with respect to Form SHC, please contact one of the attorneys in the Investment Funds & Advisers Group at Shartsis Friese LLP: [John Broadhurst](#), [Geoff Haynes](#), [Chris Rupright](#), [Carolyn Reiser](#), [Neil Koren](#), [Jim Frolik](#), [Christina Hamilton](#), [Joan Grant](#), [Lyn Roberts](#), [Anthony Caldwell](#), [David Suozzi](#) or [Kathryn Miller](#).

Previous letters to our investment advisory clients and friends and discussions of other topics relevant to private fund managers, investment advisers and private investment funds can be found at our insights page: www.sflaw.com/blog/investment-funds-advisers-insights.