

Form SHC Deadline Approaching for Investment Advisers and Other Reporters

FEBRUARY 24, 2017

Investment advisers should take note that they may be required to file Treasury International Capital Benchmark (TIC) Form SHC by Friday, March 3, 2017.¹ The following summarizes the requirements of TIC Form SHC.

- **Background.** Form SHC is a mandatory benchmark survey commissioned by the US Department of the Treasury and managed by the Federal Reserve Bank of New York (FRBNY).² The survey, which is conducted once every five years, collects information from “US resident end investors” and their US custodians on the ownership of foreign securities. These US resident end investors include public and private pension funds, certain pooled investment vehicles (e.g., mutual funds and US-domiciled private investment funds), and foundations and endowments. Investment advisers generally are obligated to file Form SHC on behalf of the US resident end investors that they advise. The information collected is part of a series of forms used to construct financial and monetary policies, generate International Monetary Fund analytics, and calculate US balance payment data.
- **Filing Requirements and Threshold Amounts.** TIC Form SHC is only required to be filed if a reporter (i) is notified by the FRBNY that it must do so, or (ii) meets either of the thresholds to report per Schedule 2 or Schedule 3, as described below. An investment adviser has no obligation to file TIC Form SHC otherwise.

Form SHC comprises three schedules:

- Schedule 1 calls for all certain basic identifying information for US resident end investors as well as summary information relating to Schedule 2 and Schedule 3, if applicable.
- Schedule 2 requires in-depth information regarding foreign securities held by US resident end investors that are not held with an unaffiliated US resident custodian, if the total fair value of such foreign securities as of December 31, 2016 equaled or exceeded \$200 million. *This reporting threshold would be crossed, for example, by an investment adviser to a US feeder fund that invests in an offshore master*

fund if the feeder's interest in the master fund was valued at \$200 million or more as of December 31, 2016.

- Schedule 3 requires certain summary information about foreign securities held by US resident end investors that are held with an unaffiliated US resident custodian, if the total fair value of such foreign securities held with such custodian as of December 31, 2016 equaled or exceeded \$200 million. *This reporting threshold would be crossed, for example, by an investment adviser to one or more US domiciled hedge funds or mutual funds that in the aggregate hold foreign securities custodied by any single US resident custodian valued at \$200 million or more as of December 31, 2016.*

In determining whether either of the thresholds (for Schedule 2 or Schedule 3) has been met, investment advisers and other reporters must consolidate all US resident portions of their organization (including US parent companies and any US branches or subsidiaries) as well as any US-based investment funds they manage.

- “Funds” for purposes of Form SHC include “all investment vehicles that pool the money of one or more investors and that invest the pooled money in one or more of a variety of assets.” Thus, “funds” include, but are not limited to, closed-end and open-end mutual funds, hedge funds, exchange-traded funds, REITs, index-linked funds and common trust funds.
- Reportable “foreign securities” include all securities issued by foreign-resident entities (including foreign entities that are subsidiaries of US parent entities) even if they are issued in the United States, as well as ADRs, GDRs and similar instruments if the underlying securities are issued by foreign resident issuers. As noted above, interests in foreign funds, including foreign “master funds,” are reportable foreign securities.
- Certain types of instruments described in the Instructions to Form SHC are not required to be reported on Form SHC. These include derivative contracts, loans and loan participation certificates, letters of credit, bank deposits, non-negotiable certificates of deposit, and certain “direct investments” representing 10% or more of the voting interests in another entity.

Investment advisers may be required to coordinate with third parties (e.g., custodians and administrators) in order to complete Form SHC.

- **Penalties for Failure to Report.** Failure to timely and accurately report information as required by Form SHC may result in civil and criminal penalties. Specifically, a reporter that fails to timely and accurately report may face one or both of (i) a civil penalty ranging from \$2,500 to \$25,000 and (ii) injunctive relief ordering its compliance. Any reporter that intentionally fails to submit Form SHC, in whole or in part, may incur a fine up to \$10,000 and, in the case of an individual, may be subject to a one-year imprisonment, in addition to, or in lieu of, any fine. Officers, directors, employees and/or agents of a reporter who willfully participate in any intentional violation may face the same penalties.

- **Additional Information.** For additional information or guidance regarding Form SHC and its reporting requirements, please contact a [WilmerHale investment management attorney](#).

¹ The instructions of Form SHC can be found [here](#). A series of FAQs surrounding Form SHC can be found [here](#), while a further description of key issues reporters need to be aware of can be found [here](#).

² Completed reports may be submitted to the FRBNY either on paper or electronically through the Federal Reserve Reporting Central System.

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