

**TREASURY FORM SHC APPLICABLE TO INVESTMENT  
MANAGERS, BROKER-DEALERS AND BANKS**

Investment managers, broker-dealers and banks, among others, may be required to file the U.S. Department of the Treasury's Treasury International Capital ("TIC") reporting form, Form SHC.<sup>1</sup> The Form, due every five years, is intended to provide data to the U.S. government relating to ownership of foreign securities by U.S. residents to assist in the computation of the U.S. balance of payments accounts and the U.S. international investment position, among other things. If one or more of the reporting thresholds was met as of December 31, 2011, the applicable Form SHC schedules must be filed with the Federal Reserve Bank of New York by March 2, 2012.

**Who Has to File Form SHC?**

All "U.S. persons"<sup>2</sup> that are "U.S.-resident end-investors" or "U.S.-resident custodians" (each, a "reporting entity") and, in each case, that meet or exceed the reporting thresholds discussed below, must file the applicable Form SHC schedules. In addition, U.S. persons that receive a letter from the Federal Reserve Bank of New York requiring them to do so must file at least Schedule 1 of Form SHC, as discussed below.

- A "U.S.-resident end-investor" is any entity that is resident in the United States, including a U.S. affiliate of a foreign end-investor, that either invests for its own account (for trading, investment and other purposes) or on behalf of others, including managed accounts and asset pools, such as hedge funds, venture capital funds and private equity funds.
- A "U.S.-resident custodian" is a custodian that is resident in the United States, including a U.S.-resident affiliate of a foreign custodian. A "custodian" includes a bank or other organization that manages or administers the custody or safekeeping of securities or other assets for institutional and private investors.

**Filing Requirements**

Form SHC is comprised of three schedules. A reporting entity has to file a given schedule only if it satisfies the filing criteria for that schedule. An entity that has received notification from the Federal Reserve Bank of New York, or that is above the filing thresholds for Schedule 2 and Schedule 3, has to file Schedule 1, which requires reporter-identifying information and summaries of financial information provided in the other two schedules.

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<sup>1</sup> The form and instructions may be viewed [here](#).

<sup>2</sup> Form SHC defines a "U.S. person" as "any individual, corporation, or other entity incorporated or legally established in the United States, including branches, subsidiaries and affiliates of foreign entities located in the United States. Corporations incorporated in the United States are considered to be U.S. residents even if they have no 'physical presence' in the United States."

A reporting entity must file Schedule 2 with respect to reportable foreign securities owned by U.S.-resident end-investors with an aggregate fair value of \$100 million or more that: (1) the reporting entity safe-keeps for itself or for its U.S.-resident clients; (2) the reporting entity holds directly with foreign-resident custodians or U.S.-resident or foreign-resident central securities depositories (*e.g.*, The Depository Trust Company) to manage the safekeeping of those securities; or (3) are instruments of the type for which there is no U.S. custodian to manage the safekeeping of those securities.<sup>3</sup> If an entity must file Schedule 1 because it received notice from the Federal Reserve Bank of New York to do so, but does not have holdings of reportable foreign securities owned by U.S.-resident end-investors with a fair value of at least \$100 million, it does not have to file Schedule 2 or Schedule 3.

Schedule 3 requires the reporting entity to provide the summary amounts of reportable foreign securities held at *each* of its U.S.-resident custodians. If, however, the reporting entity holds foreign securities with a fair value of less than \$100 million at a given U.S.-resident custodian, it does not have to file Schedule 3 *with respect to that custodian*.<sup>4</sup>

Holdings of reportable foreign securities that constitute “direct investments” are excluded from the calculation of the \$100 million filing threshold. U.S. direct investment abroad is the ownership or control, directly or indirectly, by a U.S. resident of at least 10 percent of a foreign business enterprise.<sup>5</sup> For purposes of TIC reporting forms, however, limited partner interests are generally not direct investments, even if holdings of such interests represent at least 10 percent of the limited partner interests, and so are reportable securities (general partner interests are direct investments).

## Reportable Foreign Securities

“Reportable foreign securities” are U.S.-resident holdings of foreign portfolio securities, such as foreign equities; short-term debt securities, including selected money market instruments; and long-term debt securities (debt securities with a maturity of at least one year), including asset-backed securities. “Foreign securities” are all securities issued by entities that are established under the laws of a foreign country (*i.e.*, any entity that is legally incorporated, otherwise legally organized or licensed (such as branches) in a foreign country) and all securities issued by international or regional organizations, such as the International Bank for Reconstruction and Development, even if these organizations are physically located in the United States. Excluded from reporting on Form SHC are, among other things, derivatives contracts; loans and loan participation certificates; letters of credit; non-negotiable certificates of deposit; foreign

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<sup>3</sup> A U.S.-resident custodian may be a U.S.-resident end-investor with respect to its proprietary positions in reportable foreign securities.

<sup>4</sup> U.S. persons designated by the Federal Reserve Bank of New York must file Form SHCA, which is essentially a version of Form SHC that must be filed annually.

<sup>5</sup> Direct investment transactions and positions are excluded from reporting under the TIC system. Such transactions and positions should instead be reported to the Bureau of Economic Analysis, unless an exemption is available. See forms and reporting requirements at <http://www.bea.gov/international/index.htm#surveys>.

securities temporarily acquired under reverse repurchase, borrowing, or lending arrangements; and direct investments.

## Examples

1. A reporting entity holds reportable foreign securities with a fair value of \$500 million; \$50 million of such securities are held at a U.S. custodian. The reporting entity would file Schedule 2 with respect to the reportable foreign securities not held at the U.S. custodian because the fair value of such securities, \$450 million, is above the Schedule 2 filing threshold. The reporting entity would not have to file Schedule 3 because the fair value of the reportable foreign securities held at the U.S. custodian is less than the Schedule 3 filing threshold of \$100 million.
2. A reporting entity safe-keeps for itself reportable foreign securities with a fair value of \$120 million, holds foreign securities with a fair value of \$150 million directly with a foreign custodian (*i.e.*, not with a foreign subcustodian of a U.S. custodian), and holds foreign securities with a fair value of \$150 million at U.S. Custodian A and \$80 million at U.S. Custodian B. The reporting entity would be required to file Schedule 2 with respect to the reportable foreign securities that it safe-keeps itself and holds directly with a foreign custodian because the fair value of such securities is above the \$100 million filing threshold. The reporting entity would need to file Schedule 3 with respect to its reportable foreign securities held with U.S. Custodian A because the fair value of such securities is above the \$100 million filing threshold, but not with respect to U.S. Custodian B because the fair value of reportable foreign securities held at Custodian B is less than the filing threshold.
3. A reporting entity safe-keeps for itself reportable foreign securities with a fair value of \$95 million. The reporting entity also holds reportable foreign securities with a fair value of \$90 million at U.S. Custodian A. The reporting entity has no Form SHC filing obligation (unless it is required to file Schedule 1 because it has received written notice from the Federal Reserve Bank of New York to do so). It would not be required to file Schedule 2 because the fair value of reportable foreign securities that it holds other than with a U.S.-resident custodian is less than the \$100 million filing threshold. The reporting entity would not be required to file Schedule 3 because the fair value of reportable foreign securities that it holds with a U.S.-resident custodian is less than the \$100 million filing threshold.
4. A reporting entity safe-keeps for itself reportable foreign securities with a fair value of \$200 million. The \$200 million of reportable foreign securities holdings includes a 15 percent ownership interest of the outstanding stock of a foreign corporation. The fair value of that 15 percent ownership interest is \$120 million. The reporting entity would not have a Form SHC filing obligation (unless it is required to file Schedule 1 because it has received notification from the Federal Reserve Bank of New York to do so). The reporting entity's 15 percent ownership interest in the foreign corporation, with a value of \$120 million, is excluded from the determination of whether it has met the \$100 million Schedule 2 filing threshold because it constitutes a direct investment. The reporting

entity's holdings of reportable foreign securities, therefore, have a fair value of \$80 million, which is below the Schedule 2 filing threshold. The entity does not have a Schedule 3 filing requirement because it does not hold any reportable foreign securities at a U.S.-resident custodian.

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If you have any questions regarding this memorandum, please contact Adrienne L. Atkinson (212-728-8253, [aatkinson@willkie.com](mailto:aatkinson@willkie.com)), Matthew B. Comstock (202-303-1257, [mcomstock@willkie.com](mailto:mcomstock@willkie.com)) or the Willkie attorney with whom you regularly work.

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February 3, 2012

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