

CLIENT MEMORANDUM

U.S. Commerce Department's Bureau of Economic Analysis Issues New Reporting Requirements for U.S. Financial Services Providers

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The U.S. Commerce Department's Bureau of Economic Analysis (the "BEA") has issued a final rule requiring all "U.S. financial services providers or intermediaries" who meet the reporting threshold to complete a Form BE-180, *Benchmark Survey of Financial Services Transactions Between U.S. Financial Services Providers and Foreign Persons*. The BE-180 survey is conducted every five years and is used by the BEA to monitor U.S. exports and imports of financial services, analyze their impact on the U.S. and non-U.S. economies, and support U.S. international trade policy on financial services. The BE-180 survey form is due by October 1, 2015, subject to the extensions noted below.

Similar to the other recently issued survey forms, such as the BE-10 and the BE-13, all U.S. entities that meet the reporting threshold must file a Form BE-180 (regardless of whether they have been contacted by the BEA). The BEA is required by law not to use the information provided for any purpose other than statistical reporting and may not disclose any specific information without the consent of the reporting entity. As discussed below, due to its expansive definitions and low dollar-reporting threshold, the BE-180 survey applies to a wide range of U.S. financial services providers.

Industry groups and trade associations have recently commented to the Department of Commerce regarding the burdens and complexity of the BEA reporting requirements. While the rule regarding the BE-180 survey has been finalized, the Form itself is not yet available, and it remains to be seen whether any further relief from this broad survey is forthcoming.

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Who Is Required To File?

A "U.S. financial services provider or intermediary" must complete the BE-180 survey if its total financial services transactions (either sales or purchases) with non-U.S. persons or entities exceeded \$3 million during its 2014 fiscal year. The BE-180 survey defines financial services providers to include U.S. entities in the following industries:

- financial investment activities (including portfolio management, investment advice, and all other financial investment activities);
- investment pools and funds (including open-end investment funds, trusts, estates, agency accounts, real estate investment trusts, and other financial vehicles);
- securities and commodity contracts intermediation and brokerage (including investment banking and securities dealing, securities brokerage, commodity contracts and dealing, and commodity contracts brokerage);
- securities and commodity exchanges;
- insurance carriers, insurance agencies, brokerages, and other insurance-related activities;
- insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds);
- depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation);
- non-depository credit intermediation (including credit card issuing, sales financing, and other non-depository credit intermediation);
- activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve and clearinghouse activities, and other activities related to credit intermediation); and
- holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

Reporting Threshold

The \$3 million reporting threshold applies to financial services transactions with non-U.S. persons or entities in the aggregate. When determining whether the \$3 million reporting threshold is met, a U.S. entity is required to include the value of all financial services transactions engaged in by itself and each of its consolidated subsidiaries. Services within the scope of reportable financial services transactions include:

- brokerage services related to equity transactions and other brokerage services;
- financial management services (including fees for mutual funds, pension funds, exchange-traded funds, private equity funds, corporate portfolios, individual portfolios, hedge funds, and trusts);
- financial advisory and custody services;

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- securities lending services;
- underwriting and private placement services;
- electronic funds transfer services;
- credit-related services;
- credit card services; and
- other financial services.

Form BE-180 requests U.S. entities to provide their total sales and purchases of each of the covered types of transactions by country and by relationship to the non-U.S. entity. For example, a U.S. investment adviser will be required to report fees received from managing non-U.S. investment funds, commodity pools and trusts. A U.S. broker will be required to report commissions and other fees received from non-U.S. customers for executing orders to purchase or sell securities and other financial instruments.

Reporting Deadline and Extensions

The BE-180 survey form is to be filed with the BEA no later than October 1, 2015. The BEA has stated that it will accept filing extension requests through the October 1, 2015 due date. U.S. entities can request extensions of 30 days or less over the phone or in writing; requests of greater than 30 days must be made in writing. The BEA will also provide an automatic 30-day extension to all U.S. entities that file electronically through the BEA's eFile system. It is important to note that the purpose of the survey is to gather information, and while failure to file could result in penalties, in our experience, the BEA uses notifications and repeated contacts to obtain compliance.

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