

Form SHL: Report of Foreign Residents' Holdings of U.S. Securities Due August 30, 2019

Written by Catherine M. Anderson, Brian R. Prewitt

August 14, 2019

Investment advisers, hedge and private fund managers and U.S.-resident entities should review whether they have any filing obligations under Treasury International Capital ("TIC") Benchmark Form SHL ("Form SHL"). Form SHL is a five-year benchmark filing requirement administered by the Federal Reserve Bank of New York applicable to all U.S.-resident issuers with foreign resident ownership (unless the total fair (market) value of the reportable U.S. securities owned by foreign residents is less than \$100 million). The report, which is for data current through June 30, 2019, must be submitted by or before August 30, 2019. Failure to report may result in fines up to \$25,000 as well as injunctive relief compelling compliance and criminal penalties.

Other relevant points to note on Form SHL:

- For those private funds that have a U.S.-resident custodian, then the investment adviser should coordinate with such custodian to ensure the filing of Form SHL has been made and there is no duplicate filing. U.S.-resident issuers (and investment advisers on their behalf) only must report interests held by foreign residents which are not held by U.S.-resident custodians or U.S.-resident central securities depositories.
- The determination of whether a fund's shares are a "U.S. security" is based on the country in which the fund is legally established (for example, a Delaware organized fund), not based on the residence of the issuers of the securities the Delaware fund purchases.
- Foreign-resident ownership of offshore funds (for example, Cayman) that purchase U.S. securities should not be reported. However, any U.S. securities owned by offshore funds for their portfolio are reportable.
- In general terms, for a master-feeder structure, if an entity 1) has less than a 10% voting interest, 2) has a non-voting interest in the U.S. private fund, or 3) meets the "operating companies" criteria then it is not a "direct investment" and will fall into the category of "portfolio investment" and need to be reported as part of the TIC system. Investment advisers should review the flowcharts in the instructions to Form SHL.
- Foreign-resident limited partner ownership interests in U.S.-resident limited partnerships should be reported. Limited partners' ownership interests do not carry voting rights, therefore all ownership interests, even those greater than 10% are reportable. General partner ownership interests may be considered a "direct investment," in which case such interest should be excluded from reporting.

Form SHL has two parts: Schedule 1 and Schedule 2. Schedule 1 requires the disclosure of basic corporate information, including the organization's name, address, reporting status, reporting type, valuation method used, and a summary of the Schedule 2 information.

Schedule 2 requires the details of all U.S. securities held by a foreign resident. This full Schedule 2 disclosure is required by those U.S.-resident entities who have a total fair market value of securities owned by foreign residents exceeding \$100 million dollars. U.S.-resident entities can determine whether they must submit Schedule 2 data by: (a) identifying all U.S.-resident business lines of the entity that may have reportable data, (b) consolidating the data for these entities, and (c) determining if after consolidation, the \$100 million exemption

level is exceeded.

Completed Form SHLs may be submitted electronically or via mail by August 30, 2019. All information submitted is confidential and used for statistical and analytical purposes only. Public disclosure of the results of the survey will be done in a way that does not include any identifying information of the responding entities. The full instructions to Form SHL can be viewed [here](#).

RELATED INDUSTRIES

- [Investment Advisers & Private Funds](#)

RELATED PRACTICES

- [Hedge Funds](#)

- [Fund Formation](#)

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.