

Investment Management Alert

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Due Date Approaching for TIC Form SHC

January 25, 2022

Key Points

- All U.S.-resident end-investors (including funds and fund managers) and custodians must file a Form SHC if they either (i) hold more than \$200 million of reportable foreign securities (such as securities issued by a foreign master fund) or (ii) received a letter from the Federal Reserve Bank of New York that they are required to file.
- Form SHC is due on March 4, 2022.

Every five years, the Department of the Treasury requires U.S.-resident¹ end-investors and custodians holding foreign securities to file a Form SHC² through the Federal Reserve Bank of New York (FRBNY) even if the end-investors and custodians were not sent a specific invitation. Such five-year filing for the fiscal year ending December 31, 2021 is due by March 4, 2022.

Form SHC and Filing Thresholds

Treasury International Capital System (TIC) Form SHC consists of three schedules:

Schedule	Contents of Schedule	Who Has to Report
1	Identifying and summary information from other schedules	<ul style="list-style-type: none">• Any U.S.-resident end-investor or custodian that is required to complete Schedule 2 or 3 (even if it did not receive an invitation from the FRBNY)• Any person that received a letter from the FRBNY requiring it to file a Form SHC.

Contact Information

If you need assistance or have questions regarding this alert, please contact your Akin Gump relationship attorney or one of the authors.

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Schedule	Contents of Schedule	Who Has to Report
2	U.S.-resident end-investors ³ and U.S.-resident custodians must report each reportable foreign security that they directly hold and manage the safekeeping of or hold through a foreign custodian. Note that U.S.-resident end-investors that hold their reportable foreign securities through unaffiliated U.S.-resident custodians would not be required to report those securities on Schedule 2.	U.S.-resident end-investors and U.S.-resident custodians must complete a Schedule 2 if the fair value of the reportable foreign securities on Schedule 2 is equal to or exceeds \$200 million as of December 31, 2021.
3	U.S.-resident end-investors or custodians must report summary amounts of reportable foreign securities entrusted to an unaffiliated U.S. custodian.	U.S.-resident end-investors or custodians must complete a Schedule 3 if the fair value amount of foreign reportable securities entrusted to that custodian equals or exceeds \$200 million as of December 31, 2021.

What Constitutes Reportable Securities

The only securities that must be reported on Form SHC are foreign securities, i.e., those issued by entities organized outside of the United States of America or by certain international organizations. Neither the country in which the security is traded or issued nor the currency in which it is denominated impacts whether the security is a foreign security. Reportable foreign securities consist of equity interests, short-term debt securities, long-term debt securities and asset-backed securities other than direct investments. Depositary receipts and depositary shares are “looked through” and are required to be reported if the deposited securities are foreign securities. Derivative contracts, such as futures, forwards, swaps, options and warrants, and “direct investments,” i.e., ownership interests of 10 percent or more of the voting securities, are not reportable securities in Form TIC SHC.

All holdings that qualify as “direct investments” should be excluded from the SHC Report.⁴ A “direct investment” includes the ownership of 10 percent or more of the voting equity securities of an incorporated foreign business or an equivalent interest in an unincorporated business enterprise. Limited partners in a limited partnership do not have voting rights and therefore normally do not constitute a direct investment in the view of the Treasury and the FRBNY. General partner interests, however, are generally considered direct investments and therefore are not reportable securities. Treasury recently amended the definition of “direct investments” to carve out an investment of more than 10 percent in the voting equity securities of a private fund unless that private fund also owns more than 10 percent of the voting securities of an operating business. Therefore, more than 10 percent interests in most private funds must be reported on Form SHC even if the interests are voting securities.

Reporting by Hedge Funds and Other Alternative Investment Vehicles

U.S.-organized investment advisers are required to file one consolidated report relating to the holdings of all U.S. funds they manage or sponsor and U.S.-resident managed accounts that they manage that own foreign reportable securities. Therefore, investment advisers must use the consolidated amount of reportable securities as measured across its U.S. fund clients for determining whether they satisfy the \$200 million threshold for Schedules 2 and 3. If the investment adviser is not organized in the United States, each U.S.-organized fund would need to be separately analyzed to determine if it equals or exceeds the \$200 million reporting threshold for Schedules 2 and 3.

The instructions to Form SHC include examples specific to hedge funds and other alternative investments.

Example 1

A U.S.-resident investment manager/fund sponsor (IM/FS) creates a Cayman master fund, a Cayman feeder fund and a U.S. feeder fund. The investments by the U.S. IM/FS in the Cayman funds are direct investments since the IM/FS controls the affiliated firms and should be reported to the BEA as direct investments (except for certain funds meeting the direct investment carve-out discussed above). However, the investment that the U.S. feeder fund has in the Cayman Master Fund is portfolio investment and should be reported on the Form SHC by the IM/FS as the representative of the U.S. feeder fund as the owner (end-investor). However, if a U.S. custodian holds the equity interests of the U.S. feeder fund in the foreign master fund, then the U.S. custodian would have the responsibility of reporting those interests on Form SHC.⁵

Example 2

A foreign-resident IM/FS sets up a Cayman master fund, a Cayman feeder fund, and a U.S. feeder fund. The investments between the foreign IM/FS and the U.S. feeder fund are direct investment since the foreign IM/FS controls the feeder fund (except for certain funds meeting the direct investment carve-out discussed above). However, the equity investment that the U.S. feeder fund has in the foreign master fund is [a] portfolio investment and should be reported by the U.S. feeder fund as ownership of foreign equity on Form SHC. If a U.S. custodian holds the equity interest of the U.S. feeder in the foreign master fund, then the U.S. custodian would have the responsibility of reporting on Form SHC.⁶

Preparation for Filing

Persons that are required to file Form SHC should begin completing their Form SHC in preparation for the March 4, 2022 deadline and ensure that they have the requisite 10-digit Reporter Identification Number assigned by the FRBNY as soon as possible.⁷ For further information regarding Form SHC, the TIC Form SHC itself and the instructions are available [here](#) and other resources are available at the Form SHC reporting center [here](#). Persons reporting fewer than 100 positions on Schedule 2 may file with the FRBNY in paper or electronically through the [Federal Reserve Reporting Central System](#). Persons reporting 100 or more positions on Schedule 2 must submit their reports electronically. There are potential civil and criminal liability and penalties for failure to file timely and accurate reports for any U.S. person or group subject to the

reporting requirement. All data used to create the Form SHC report must be retained by the reporter for a period of 36 months from the date of the submission of the report.

¹ TIC defines a “U.S. resident” as “[a]ny individual, corporation, or other organization located in the United States, including branches, subsidiaries, and affiliates of foreign entities located in the United States. The residency of an entity is determined by where a corporation or subsidiary is incorporated and where a branch is licensed, not by the physical office of the counterparty.” [TIC Glossary \(Mar.-Apr. 2018\)](#).

² Requirements to file other Treasury forms, such as TIC S, TIC SLT and TIC SHL, continue to apply.

³ An end-investor is an organization that either invests on securities on its own or on behalf of others, such as investment managers. A U.S. manager is required to report for the other U.S. parts of its organization, including the U.S. funds that it manages.

⁴ Securities that are excluded from reporting in Form SHC as a “direct investment” must be reported as part of the more onerous direct investment surveys for the Bureau of Economic Analysis (BEA). Guidance on the decision to report investments in certain private funds or between entities of certain private funds in the TIC system or in BEA surveys can be found [here](#). Use the tool labeled “U.S. Investments in Foreign Private Funds.”

⁵ From “Quinquennial Report to the Federal Reserve Bank of New York, Report of U.S. Ownership of Foreign Securities, Including Selected Money Market Instruments (SHC) as of the last day of December,” page 15, available [here](#).

⁶ From “Quinquennial Report to the Federal Reserve Bank of New York, Report of U.S. Ownership of Foreign Securities, Including Selected Money Market Instruments (SHC) as of the last day of December,” page 15, available [here](#).

⁷ Filers may obtain a Reporter Identification Number by contacting FRBNY staff at 212-720-6300 or SHC.Help@ny.frb.org.

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