



## THE REGULATORY FUNDAMENTALS GROUP LLC

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March 16, 2018

Dwight Wolkow  
International Portfolio Investment Data Systems  
Department of the Treasury  
Room 5422  
1500 Pennsylvania Avenue NW  
Washington, DC 20220

Via Email: [comments2TIC@treasury.gov](mailto:comments2TIC@treasury.gov)

Re: **Comments on TIC Form SLT**

Dear Mr. Wolkow:

We respectfully submit these comments and questions on the TIC Form SLT pursuant to the Comment Request in the Federal Register Notice of January 17, 2018, available [here](#). Among other topics, the notice invited comments concerning the burdens on respondents and “ways to enhance the quality, usefulness and clarity of the information to be collected.”

We also submit these comments in furtherance of the policies in [Executive Order 13772](#) signed by President Donald Trump which includes among its “Core Principles:” “make regulation efficient, effective and appropriately tailored.” We note that pursuant to that Executive Order the Secretary of the Treasury was directed to review reporting and recordkeeping requirements concerning their promotion and support of the Core Principles.

The Regulatory Fundamentals Group LLC (RFG) advises endowment investment offices on compliance and filing requirements such as those required by the Department of the Treasury, the Securities Exchange Commission and the Bureau of Economic Analysis. Our non-profit clients fully intend to comply with their reporting obligations, but we note that there are over 20 governmental reports that they could be potentially obligated to file, depending on their activities.

We sometimes find it difficult to apply the form instructions to specific situations typically faced by our clients. Concerning TIC form filings, we have previously sought answers to our questions from the Federal Reserve Bank of New York (“FRBNY”). Additionally, some of our clients have also contacted the FRBNY. However, as a group, we have noticed in some cases a hesitancy to provide general guidance and potentially inconsistent responses to our queries. We believe these arise because the theoretical instructions are difficult to apply to day-to-day situations, not from a lack of effort on the part of appropriate staff.

Accordingly, we submit these comments and questions to you for your consideration with the request that you clarify the instructions or provide separate guidance for our clients tailored to the scenarios we present. We believe that clarity will simplify the effort required to satisfy reporting obligations and might reduce multiple and possibly redundant inquiries posed to government and agency staff.

### **TIC Form SLT:**

TIC Form SLT seeks information about holdings of long-term securities by U.S. and foreign residents. A U.S. organization may report as (i) an investor, (ii) an issuer, and/or (iii) a custodian. A report is required if the total of all reportable securities exceeds \$1 billion. Our clients typically file as investors.

#### **1. Reporting for foreign securities held by a “custodian” with foreign affiliates:**

Concerning reporting as an investor, or “end-investor” (as used in the instructions), a U.S. reporter is directed to report, on Part B, on foreign securities that are not held by an unaffiliated U.S. custodian. In some instances, our clients may have placed assets with a prime broker (in effect, serving as the “custodian”) where the underlying contract allows the prime broker-custodian to transfer the assets between the prime broker’s domestic entity and foreign affiliates.

We believe that the instructions should address this scenario and clarify that where an end-investor’s asset are contractually placed with a U.S. resident prime broker, the end-investor has no further obligation to report on, or track the location of, the securities. Any such tracking obligation would place an onerous burden on the end-investor. We are uncertain about the current reporting practice and requirements for a prime broker-custodian that has swept third-party assets to an offshore affiliate. But the task of figuring out which sub-entity is holding client assets and whether the entity is foreign or domestic, is already known to the contracting prime broker-custodian and, if desired, could presumably be allocated to that entity as part of the instructions.

#### **2. Reporting for foreign securities in managed accounts (this question is also relevant for TIC Forms S, and SHC):**

Concerning the calculation of whether the \$1 billion threshold is met, as well as reporting obligations on Part B, most of our clients use the services of investment managers to manage portions of their endowment in managed accounts. The instructions indicate that both investment managers and certain types of investors are deemed to be an “end-investor” and there is no mention as to the handling of securities in managed accounts. We have received inconsistent advice from staff as to who has the responsibility for reporting the securities in managed accounts. Ultimately we were instructed to have our clients call for guidance as to their particular facts. We suggest the instructions be clarified to address the following scenarios:

- a. May an investor rely on a U.S.-based investment manager to report on the investor’s holdings in the manager’s TIC filings?
- b. In doing so does an investor need to consider the manager’s materiality thresholds? For instance, if the investor is large enough to have a filing obligation, but specific underlying holdings are reportable by a manager that is NOT large enough to have a filing obligation, does the investor need to pick those securities up in its filing?

- c. Also concerning managed accounts, if the manager is responsible for the reporting of the foreign securities, is that still the case if the manager is a foreign manager? If the foreign manager does not have a reporting obligation, does the U.S. owner of the managed account have an obligation to report on the securities? It appears to us that the instructions are directed to U.S. resident entities, but we do not see specific guidance for this scenario and have, in the past, received advice that only the manager files.

We suggest that the instructions specify that the U.S. manager always has the obligation to report the foreign securities in managed accounts, regardless of meeting the thresholds (or upon meeting a threshold that Treasury finds relevant). This would achieve consistency and accuracy among the reports, as well as reduce the burden for charitable investors. Alternatively, the rule could provide that the end-investor must report securities held in managed accounts. A potential middle ground situation where the investor must contact each manager to ascertain if the manager is reporting on the investor's securities, and then report those that the manager is not reporting, is the most onerous and inefficient way of handling the issue. However, it may be that this is what some investors are being tasked with.

### **3. Reporting for foreign securities in a "fund of one" or with large LP interests (over 50%) in commingled fund:**

Some of our clients may invest through a vehicle that is structured as a "fund of one" where there is a general partner, but the client is the only limited partner; or alternatively, they may invest in a commingled fund such that they, as a limited partner, have a greater than 50% interest. (This might occur, for example, during the initial ramp-up of a fund or if other investors redeem.) We are unclear who has the obligation for reporting on the foreign securities held by those funds. Page 6 of the instructions indicate that investment managers/advisors and fund sponsors of private investment vehicles may be end-investors, but does not provide any definitive guidance in this scenario. Further, the instructions at page 7 requires reporting for a subsidiary, which is defined in the TIC Glossary as "a company in which another company (parent) owns 50% or more of the voting securities, or an equivalent interest, or meets the consolidation requirements of U.S. GAAP" (emphasis supplied). Potentially under this test non-voting interests which enjoy certain types of rights would fall within the subsidiary definition. Regardless of the potential for consolidation under GAAP due to ASC 810-NO.2015-02, we suggest that Treasury specify that the U.S. manager always has the obligation to report the foreign securities in funds of one. Again, this instruction could apply without regard to meeting a threshold or upon meeting a threshold that Treasury finds relevant. We also request confirmation that where a fund vehicle has a non-U.S. manager, that either (i) the investor is not required to report on the holdings of the fund or (ii) the investor is only required to report the fund holdings if it is the only limited partner in the fund or is taking an active managerial role on behalf of the fund. (In other words, the mere existence of undeployed rights, such as "kick out rights" as defined under ASC 810-NO.2015-02, would not be enough to trigger filing obligations).

### **4. Reporting for foreign securities held by a pension plan:**

We request clarification as to the entity with reporting obligations for a U.S. pension plan established by a U.S. reporter. Of course, if the securities are held by a U.S. custodian, the filing obligation falls on the U.S. custodian. But in the case where the securities are not held by a U.S. custodian, the instructions to

the form and an FAQ on the website<sup>1</sup> give disparate indications that filing may be required by the entity/reporter that established the pension plan<sup>2</sup>, the manager of the plan<sup>3</sup>, or the pension plan itself. Also, such plans are typically established as a trust. The instructions at page 8 state that a U.S. entity should consolidate information for all “trusts...created by the reporting entity.”

#### 5. Question on pension plan as foreign trust:

We request clarification that a U.S. reporter is not required to include in its filing assets held by a pension plan that is established as a foreign trust. (A foreign pension plan may be established to provide benefits to employees located in a foreign country.) As noted above, the instructions at page 8 state that a U.S. entity should consolidate information for all “trusts...created by the reporting entity.” However, of relevance to a foreign trust, page 7 of the instructions provides that an entity should consolidate “U.S. resident trusts” but does not refer to foreign trusts. This leads us to believe that foreign trusts were not contemplated for inclusion in the reports. Additionally, as noted above, there are other indications in the instructions that the appropriate filer is the manager of the pension plan, or the pension plan itself. In this case, the manager and the plan are not likely to be U.S. persons and so would appear to not have a reporting obligation. Since the trust beneficiaries are not likely to be U.S. residents, it may be that Treasury does not find such a filing relevant for the purposes of the form.

Thank you for your consideration of our comments and questions. If it would facilitate a discussion of these issues, we would be happy to speak on the telephone or meet in your offices. I can be reached at [dprutzman@regfg.com](mailto:dprutzman@regfg.com) or (212) 537-4058 (x1).

Sincerely,



Deborah S. Prutzman

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<sup>1</sup> The relevant FAQ, #3, available [here](#), provides: Q. Who should report in the case that a U.S. investment manager (IM) manages foreign securities for an unaffiliated U.S.-resident entity (entity not sponsored or created by the IM), such as a pension fund, that could also be a potential TIC SLT reporter as an end- investor?

**A.** If it is not clear based on the instructions which entity is required to report, the IM or the end-investor that is not a natural person should call the Federal Reserve Bank of New York (FRBNY). If the client of the investment adviser is a natural person, the IM should report. Natural persons do not file TIC reports.

<sup>2</sup> Concerning the entity that established the pension plan, the instructions at page 8 state that a U.S. entity should consolidate information for all “trusts...created by the reporting entity.”

<sup>3</sup> For example, in the TIC Glossary, end-investor is defined as follows: “END-INVESTOR – An entity that ... invests on behalf of others, including asset pools, such as managers of mutual funds, managers of insurance company policyholder assets, and pension fund managers.” Further, the instructions at page 6 state: “U.S.-resident end investors include, but are not limited to: ... Managers of private and public pension funds.”