

# Private Equity Alert

## Certain Private Equity Firms To Become Subject to Filing Treasury International Capital Form SLT

By Richard Ellenbogen and Carlos Larkin

The Department of the Treasury, the Federal Reserve Bank of New York and the Board of Governors of the Federal Reserve System have announced the adoption of Form SLT. The stated purpose of the Form SLT report is to gather timely and reliable information on *foreign-resident holdings of long-term US securities* and on *US-resident holdings of long-term foreign securities* in order for the Department of the Treasury to prepare its US Balance of Payments accounts and international investment positions, and to better formulate international financial and monetary policies. Form SLT requires reporting with the Federal Reserve Bank by any *US-resident entity* holding consolidated “reportable long-term securities” equaling or exceeding \$1 billion in total fair market value, effective as of September 30, 2011, with an initial required filing date of October 24, 2011.

### Who Must Report

All US persons who are US-resident custodians, US-resident issuers or US-resident end investors whose holdings of long-term reportable securities meet or exceed the \$1 billion reporting threshold are required to file Form SLT. Subject to the exclusions described below, Form SLT generally requires a US-resident entity to report (i) all foreign securities held for its own account or the account of clients (including, in the case of an investment adviser, any US-based funds it manages) that are not held by US custodians and (ii) all securities of such US-resident entity (including, in the case of an investment adviser, any interests in any US-based funds it manages) that are held by foreign investors, where the aggregate value of the securities described in clauses (i) and (ii) is equal to at least \$1 billion.

A US-resident issuer is a legal entity that has the power to issue and distribute a security, which includes, for example, a US organized private investment fund that issues interests to foreign investors (including a US-organized master fund that has, as an investor, a non-US feeder fund). A US-resident end-investor is a legal entity that invests in securities for itself and on behalf of others, including, for example, a US-based investment adviser (whether or not registered) on behalf of itself and its managed funds, and would also include a manager of private and public pension funds and similar entities that own shares or units of, or other equity interests in, any foreign entity.

### Long-Term Securities

Reportable long-term securities (i.e., securities with a maturity of more than one year) generally include (i) securities issued by US-resident issuers that are owned by foreign residents and (ii) US-resident holdings of foreign securities. Residency is determined generally by the country of

**Weil News**

- Weil advised Providence Equity Partners in connection with its acquisition of George Little Management, a trade show producer
- Weil advised Advent International in connection with its acquisition of Bojangles' Restaurants
- Weil advised CCMP Capital Advisors in connection with the sale of its portfolio company CareMore Health Group, a senior health services provider
- Weil advised National Surgical Care (a portfolio company of CCMP Capital Advisors and Brazos Private Equity Partners) in connection with the sale of substantially all of its assets to AmSurg
- Weil advised Summit Partners in connection with its investment in Access Information Management, a provider of records management storage and destruction services
- Weil advised DLJ Merchant Banking Partners in connection with its sale of Total Safety U.S., a distributor and marketer of industrial fire protection and gas detection systems
- Weil advised TowerBrook Capital Partners in connection with its acquisition of CapQuest Group, a purchaser, manager and collector of performing and sub-performing consumer debt
- Weil advised Bregal Capital in connection with its acquisition of Novem Beteiligungs, a German provider of high quality decorative trim and functional elements for vehicle interiors

legal residence, incorporation or formation. Excluded from long-term securities are generally:

- short-term securities (i.e., securities with a maturity of one year or less);
- banker's acceptances and trade acceptances;
- derivative (including forward) contracts;
- loans, loan participation certificates and letters of credit;
- precious metals and currencies held;
- bank deposits;
- annuities;
- direct investments (e.g., US resident owns a direct or indirect voting interest of 10% or more in a foreign resident company; or foreign resident owns a direct or indirect voting interest of 10% or more in a US-resident company); and
- securities taken as collateral and securities received in repurchase/resale agreements and security lending agreements.

### Certain Considerations for Private Equity Managers and Funds

**Included Securities:** A private fund manager and any other investment adviser is required to consolidate its reportable long-term securities across all funds/platforms in determining whether it meets or exceeds the reporting threshold and must

account for (i) all securities issued by its US-resident funds that are owned by foreign investors and (ii) all reportable foreign securities owned by its US-resident funds. In addition, if the securities evidencing a portfolio investment are held by a US custodian, then the portfolio investment is reportable by the custodian and not by the investment adviser. A private fund manager and any other investment adviser that is subject to reporting is required to file a single consolidated Form SLT.

Also as noted above, "direct investments" are not considered to be reportable long-term securities for purposes of Form SLT. According to the defined term, a "direct investment" relationship exists when a US-resident owns, directly or indirectly, 10% or more of the voting securities of a foreign-resident business, or when a foreign-resident owns, directly or indirectly, 10% or more of the voting securities of a US-resident business. Accordingly, most private equity investments by a US-resident fund in a foreign company would not be considered in determining the consolidated reportable long-term securities of the private equity fund sponsor. Also, as defined, "[l]imited partners in a partnership do not have voting rights and therefore cannot have direct investment." Accordingly, an investment by a US-resident fund as a limited partner of a non-US limited partnership should be considered to be reportable

long-term securities, regardless of the percentage of the limited partnership actually acquired.

**Non-US Funds:** Investments in shares or units of or other equity interests in, private funds are equity investments that must be considered in determining reportable long-term securities. The determination of whether such holdings are US or foreign is based on the country in which the relevant fund is legally established (regardless of where the fund is offered or the fund manager is located). In other words, an investment in a foreign security by a foreign-resident fund, is not reportable even though managed by a US-resident investment adviser.

**Master-Feeder Structures:** An investment by a private fund manager (or its affiliate) as general partner in the voting securities of a fund is considered to be a direct investment and, therefore, not reportable. In a master-feeder structure, an investment by a US-resident feeder in a foreign-resident master, and an investment by a foreign-resident feeder in a US-resident master, are portfolio investments and, therefore, reportable long-term securities. However, if the feeder fund invests in or otherwise owns

over 10% of the “voting securities” of the master fund (and the master fund is other than a limited partnership), then the investment is likely a direct investment and not reportable.

### When Reports are Due

Form SLT will be required to be filed for the quarters ending September 30 and December 31, 2011. Commencing in 2012, the reporting requirement is monthly. In each case, the Form SLT is due no later than the 23rd calendar day after the last day of the relevant reporting period (or, if not a business day, the first business day thereafter). As such, the first filing date for Form SLT is October 24, 2011. Once a Form SLT is filed in any calendar year by a reporting entity, it must be filed for each remaining period in that calendar year, regardless of whether the reporting entity's holdings continue to exceed the reporting threshold.

### What Must Be Reported

The consolidated report generally includes the country of residence of a foreign resident, the fair market value and type of security, and whether the foreign resident is a foreign official institution which includes national governments,

international and regional organizations and sovereign wealth funds. In the case of foreign securities held by US residents, the consolidated report generally includes the country of residence of the foreign issuer and the fair market value and type of security.

### Valuation of Securities

Long-term securities should be valued at their “fair value” in accordance with ASC 820 (formerly FAS 157). Securities should be valued (and reported if required) using settlement date accounting. Short positions should not be netted from gross long positions. Since uncalled capital commitments in a private equity fund are not yet invested, such amounts do not yet constitute, and should not be included in determining, reportable long-term securities.

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The Private Equity Group's practice includes the formation of private equity funds and the execution of domestic and cross-border acquisition and investment transactions. Our fund formation practice includes the representation of private equity fund sponsors in organizing a wide variety of private equity funds, including buyout, venture capital, distressed debt and real estate opportunity funds, and the representation of large institutional investors making investments in those funds. Our transaction execution practice includes the representation of private equity fund sponsors and their portfolio companies in a broad range of transactions, including leveraged buyouts, merger and acquisition transactions, strategic investments, recapitalizations, minority equity investments, distressed investments, venture capital investments and restructurings.

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