

# The Federal Reserve Cracks Down on Form SLT Reporting by U.S. Foreign Bond Issuers

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Capital Markets

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The Federal Reserve has recently sent non-compliance notices to U.S. issuers of foreign-currency denominated bonds that are sold abroad (“foreign bonds”), including Euro bonds, for failure to submit Treasury International Capital (TIC) Form SLT. Although the final instructions for Form SLT were promulgated in February 2011, this filing requirement has come as a surprise to many U.S. corporate issuers.

Form SLT is a monthly report on cross-border portfolio investment in long-term marketable securities by U.S. and foreign residents and is used by the U.S. government for formulating international financial and monetary policy. The form is designed to collect data on:

- the securities of a U.S. person that are held by foreign resident investors (not through a U.S.-resident custodian); and
- a U.S. person’s investments in foreign securities that are not held by a U.S.-resident custodian,

in each case, when the aggregate amount of these securities exceeds \$1 billion.

Foreign bonds are typically held by investors through the central securities depositories Euroclear Bank S.A./N.V. (“Euroclear”) and Clearstream Banking, *société anonyme* (“Clearstream”) and not through a U.S. central securities depository, such as The Depository Trust Company (“DTC”). Form SLT treats all securities issued by a U.S. person that are held through Euroclear and Clearstream as being held by foreign resident investors. Accordingly, a U.S. issuer of more than \$1 billion of foreign bonds would likely be required to file Form SLT monthly. Failure to comply with the Form SLT reporting requirements may lead to civil penalties and potentially criminal prosecution.

In light of this increase in regulatory scrutiny, U.S. companies should carefully evaluate whether their holdings and securities issuances trigger Form SLT reporting requirements. If a company engages in cross-border securities investments or offerings, including foreign bonds, it may be subject to these requirements.

The following frequently asked questions address many of the questions companies will have in evaluating the applicability of the Form SLT reporting requirements.

## TIC Form SLT: Frequently Asked Questions

### 1. Who must report?

A U.S. entity (*i.e.*, a U.S.-resident issuer, custodian or end-investor) is required to submit Form SLT if its aggregate “reportable securities” (see below), as both an issuer of securities to non-U.S. holders and as a holder of foreign securities, exceed \$1 billion.

- **U.S.-resident issuers** must submit Form SLT if they issue U.S. securities held directly or owned by foreign residents. They need not submit the form if a U.S.-resident custodian or U.S.-resident central securities depository is used. A corporate issuer is a “resident” of the United States if it is incorporated there.
- **U.S.-resident custodians**, including central securities depositories, must submit Form SLT if they hold in custody (a) U.S. securities on behalf of foreign residents or (b) foreign securities on behalf of U.S. residents, or if they hold reportable securities for their own account.
- **U.S.-resident end-investors** must submit Form SLT if they hold foreign securities directly, but not if such securities are held through a U.S.-resident custodian or U.S.-resident central securities depository. For instance, if a U.S. corporate issuer holds direct strategic investments in private foreign companies, it would need to assess whether a Form SLT filing obligation was triggered.

### What is the exemption level?

An entity is not required to submit Form SLT if the consolidated total of all of its reportable securities has a fair value of less than \$1 billion on the last business day of the reporting month. For example, if a U.S. resident entity issues two series of foreign bonds for an aggregate principal amount of €1 billion, it would exceed the reporting threshold. Non-U.S. dollar denominated securities must be converted into U.S. dollars using the spot exchange rate in effect at the close of business on the last business date of the month.

If the entity meets or exceeds the \$1 billion exemption level in any given month, the entity must continue to submit Form SLT for each remaining month in that calendar year, even if the entity’s reportable securities fall below the exemption level in subsequent months.

### What are reportable securities?

Reportable securities are:

- long-term securities issued by U.S. residents directly to foreign residents, including, among other things, shares or other units or equity interests issued directly to or placed with foreign residents, unless the foreign resident has a “direct investment interest” in the U.S.-resident issuer; and
- U.S. resident holdings of certain foreign securities.

Examples of reportable securities include equity interests such as common stock and certain preferred stock; and long-term debt securities such as convertible bonds, asset-backed securities, and fixed or floating rate notes. Excluded from the definition are short-term securities (*i.e.*, with an original maturity of one year or less), bankers’ acceptances and trade acceptances,

derivative contracts, loans and loan participation certificates, letters of credit, precious metals, bank deposits, annuities, and “direct investments.”

A direct investment occurs if a foreign resident owns a direct or indirect voting interest of 10% or more of a U.S. resident issuer, or if a U.S. resident owns a direct or indirect voting interest of 10% or more of a foreign resident issuer. Direct investments are not reportable in Form SLT.

Generally, limited partnerships are not considered “direct investments” unless the partnership agreement explicitly grants limited partners voting rights. By contrast, general partnerships are presumed to control a partnership and thus are direct investments.

## **2. Should a U.S. resident company file a consolidated Form SLT?**

For purposes of the report, U.S. resident companies should consolidate all subsidiaries, except for foreign-resident offices and foreign-subidiaries, in accordance with U.S. Generally Accepted Accounting Principles. The fair value of the consolidated holdings and issuances of the company and its subsidiaries is calculated to determine whether a company exceeds the exemption level of \$1 billion.

## **3. How do companies report?**

Form SLT must be submitted electronically using the Federal Reserve System’s “Reporting Central” electronic submission system (<https://www.frbervices.org/centralbank/reportingcentral/index.html>).

### What is an RSSD-ID and where can a company find its RSSD-ID?

The RSSD-ID is a reporter identification number and is required for all Form SLT filers. Each reporting entity is assigned an “RSSD-ID” by the Federal Reserve System. A company’s RSSD-ID for Form SLT is the same number used for TIC Forms SHC(A) or SHL(A). If the organization is not already a filer of the U.S. Ownership of Foreign Securities form, then the company should contact the Securities Reports Division of the Federal Reserve Bank of New York to obtain its 10 digit reporter identification number.

### How frequently must companies report?

Companies who meet the reporting requirements must submit Form SLT on a monthly basis for the life of the security, assuming the company continues to exceed the \$1 billion exemption level.

### By when must companies report?

The report must be filed by the 23rd day of the month following the month covered by the report. For example, the May report must be filed by June 23rd.

## **4. What are the consequences of non-compliance?**

Entities that fail to comply with the Form SLT reporting requirements may face civil penalties of between \$2,500 and \$25,000 per month of noncompliance. If a company has willfully violated these reporting requirements, it may be subject to criminal prosecution, with potential sentencing to include up to \$10,000 in fines or one year in prison per violation.

## Capital Markets

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Securities and Capital Markets and Financial Institutions practice groups:

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