

BE-180 Filing Requirements for Financial Services Providers

The U.S. Department of Commerce Bureau of Economic Analysis (“BEA”) which could potentially apply to you. For most U.S. entities subject to the filing, the deadline is November 1, 2015, though extensions may be obtained.

Background

Every five years, the BEA conducts a benchmark survey of the financial services purchased/sold between U.S. financial services providers and foreign persons. The prior report in 2010 was required only of those financial services providers that were explicitly given a notice to file by the BEA. However, the current report is required of *all* financial service providers that exceed the threshold described below. Further, the BEA would *like* information from all firms that have international financial services transactions, regardless of whether such transactions meet the threshold and has requested that such firms file a less detailed report.

Who Must File

U.S. persons that are: (i) financial services providers, as defined below; (ii) intermediaries; or (iii) whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and that had financial services transactions (either sales or purchases) directly with foreign persons in excess of \$3,000,000, when consolidated, during 2014. The \$3,000,000 threshold should be applied to financial services transactions with foreign persons by all parts of the consolidated U.S. enterprise that are financial services providers or intermediaries. Because the \$3,000,000 threshold applies to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both.

Financial Services and Financial Services Providers

The definition of “financial services” is very broad and includes trading, issuing, dealing, underwriting, lending, custody, etc., of financial instruments; financial advisory or management services; credit card services; credit-related services (including establishing, maintaining, or arranging credit, letters of credit, lines of credit, mortgages, etc.); financial rating services; electronic funds transfer services; insurance services; etc.

The definition of “financial services provider” is similarly broad and includes entities such as (i) depository credit intermediation and related activities (including commercial banks, bank holding companies, financial holding companies, savings institutions, etc.); (ii) consumer lending; (iii) financial investments and related activities (such as security and commodity futures brokers, dealers, exchanges, traders, underwriters, investment bankers, and providers of securities custody services); (iv) insurance carriers and related activities (including agents, brokers, and services providers); and (v) investment advisors, investment managers and funds, trusts, and other financial vehicles (including mutual funds, pension funds, real estate investment trusts, investors, stock quotation services, etc.).

Reportable Transactions for Investment Managers

Investment managers must report fee income from or to foreign persons for managing or administering financial portfolios, such as cash, securities, futures, and other financial instruments or assets, if the investment manager or foreign person has the authority to direct the use or investment of funds or other assets. These fees must be reported (i) whether the assets are held by the manager or a custodian, (ii) from actively managed accounts, and (iii) from passively managed, or indexed, accounts.

U.S.-based investment managers may be required to file reports if they receive fees for serving either as an adviser or general partner to non-U.S. funds. Non-U.S.-based investment managers cannot be forced to file as the BE-180 applies only to U.S. persons; however, if such an entity is providing services to a U.S.-based fund and receiving fees in excess of the threshold, the fund itself will have a filing obligation which, practically, may have to be undertaken by the foreign manager in its capacity as general partner to the fund (see “Responsibility for Reporting when an Intermediary is Involved” for a discussion of who is likely to file on behalf of the fund in such a situation).

What the Report Requires

Those subject to the reporting requirement must provide detailed data on the amount of sales and/or purchases of financial services for the 2014 calendar year. In addition to reporting the total amount of purchases and sales, filers must itemize purchase and sale data (i) for each type of covered financial service, and (ii) each country where such services were purchased or sold. Those who have completed other BEA forms recently will be pleased to know that only one form is required and the foreign persons the filer has done business with do not need to be identified in any manner.

When Filing is Due

The due date for filing the BE-180 was originally October 1, 2015, but automatic extensions have been granted according to the following schedule:

- a. November 1, 2015 if you were notified by BEA and have a BE-180 identification number below 140012490.
- b. December 1, 2015 if you were notified by BEA and have a BE-180 identification number above 140012490.
- c. November 1, 2015 if you were NOT notified by BEA and do NOT have a BE-180 identification number.

Additional extensions are available upon request (up to an additional 30 days for filers in categories (a) and (b) above and up to an additional 60 days for filers in category (c), but in either case, requests for extension must be filed by November 1, 2015).

Responsibility for Reporting when an Intermediary is Involved

For transactions that are arranged by, billed through, or otherwise facilitated by, a financial services provider or intermediary, it is generally the responsibility of the U.S. financial services provider or intermediary that directly deals with the foreign person (and not the U.S. customer of the intermediary) to report the transaction(s) on the BE-180 survey.

The BEA has provided the following order of priority to help determine reporting responsibility in cases where more than one U.S. financial services provider is involved in the transaction: (1) a U.S. broker, (2) a U.S. financial manager, such as a fund or investment manager, (3) a U.S. custodian, or (4) if the custodian does not have or cannot obtain the information needed to report, then the U.S. principal or its paying agent.

Particularly in the case of funds advised by non-U.S. financial service providers, it may be unclear who has taken the responsibility to file on behalf of the fund. We recommend contacting each U.S. intermediary in the above recommended order to discuss and coordinate filing and to make sure that there are not duplicate filings.

Penalties

Penalties for failing to file may exceed \$30,000 and, for individuals who willfully violated the filing requirement, up to one year in prison.

Filing Assistance

Please contact your normal Winston & Strawn attorney or any of the attorneys on the next page if you have any questions or would like assistance in preparing your filing.

[BE-180 Homepage](#)

[Filing Instructions](#)

[BE-180 Form](#)

Related Professionals

If you have questions, please contact any of the Financial Services attorneys listed below or your usual Winston & Strawn LLP contact.

Basil Godellas
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Chris Edwards
Glen Barrentine
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