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New Guidance on BE-180 Reporting Requirements for Certain Financial Services Providers

Recent guidance from the U.S. Department of Commerce's Bureau of Economic Analysis ("BEA") reveals that the BEA will now require certain U.S. financial services providers (including investment advisers, funds and their general partners) to file a BE-180 report, regardless of whether the provider has been directly notified by the BEA. ***Under the extended filing deadlines, financial services providers should be prepared to file a BE-180 report by November 1, 2015.***

Background

The BEA conducts a benchmark survey every five years, collecting data on transactions between U.S. financial services providers and foreign persons. In the past, financial services providers, such as underwriters, investment bankers, mutual funds and private fund advisers, were required to file a report only if contacted by the BEA. Under new rules recently issued by the BEA, a financial services provider is required to file a BE-180 report, regardless of whether such provider has been contacted by the BEA, if the provider's aggregate purchase or sale transactions with foreign persons during its 2014 fiscal year exceed certain thresholds.

Reporting Considerations

A U.S. financial services¹ provider must file a report on Form BE-180 if, in fiscal year 2014, the service provider either (A) sold at least \$3.0 million of financial services to foreign persons,² or (B) purchased at least \$3.0 million of financial services from foreign persons.³ Moreover, service providers with less than \$3.0 million in financial services purchases or sales are required to file a partial BE-180 report if requested by the BEA. Reporting entities must provide information relating to their foreign sales and purchases, itemized by country and category of financial services rendered.

For purposes of the filing requirement, a "financial services provider" includes, without limitation, companies and/or subsidiaries and other separable parts of companies in the following industries:

- 1 "Financial services," for purposes of the BE-180 report, includes brokerage services related to equity transactions; other brokerage services; underwriting and private placement services related to equity transactions; underwriting and private placement services related to debt transactions; financial management services; credit-related services, except credit card services; credit card service; financial advisory and custody services; securities lending services; electronic funds transfer services; and other financial services.
- 2 A "foreign person" means any person (including an individual or an entity) resident outside the United States or subject to the jurisdiction of a country other than the United States.
- 3 Additionally, an individual or entity must file a BE-180 report if it is contacted directly by the BEA, regardless of whether it is a financial services provider or meets the purchase or sale thresholds.



- Investment advisors and managers and funds, trusts and other financial vehicles (including mutual funds, pensions funds, real estate investment trusts, investors, and stock quotation services);
- Depository credit intermediation and related activities (including commercial banking, bank holding companies, financial holding companies, savings institutions, check cashing, and debit card issuing);
- Nondepository credit intermediation (including credit card issuing, sales financing, and consumer lending);
- Securities, commodity contracts, and other financial investments and related activities (including security and commodity futures brokers, dealers, exchanges, traders, underwriters, investment bankers, and providers of securities custody services); and
- Insurance carriers and related activities (including agents, brokers, and services providers).

Of particular relevance to fund managers and advisers, U.S. persons are required to report their fees from managing foreign commodity pools, mutual funds, hedge funds and trusts (including trusts containing mortgages), including additional fees based on positive returns. Profit allocations, such as carried interest received by a U.S. general partner to a foreign domiciled fund, are reportable as financial management fees. Moreover, U.S. fund managers must report transactions with foreign affiliates and unaffiliated persons, while U.S. funds managed by a foreign party must report their covered transactions with foreign persons.

A financial services provider's responses on the BE-180 report are confidential and may be used only for analytical and statistical purposes. Persons who fail to file a report may be subject to civil penalties and injunctive relief. Additionally, a willful failure to file may result in criminal penalties.

The original October 1, 2015 deadline for filing the BE-180 report was previously extended. The following due dates now apply to the filing:

- **November 1, 2015** - U.S. reporters that were notified of the BE-180 report by the BEA and who have an identification number below 140012490.
- **December 1, 2015** - U.S. reporters that were notified of the BE-180 report by the BEA and who have an identification number above 140012490.
- **November 1, 2015** - U.S. reporters that were not notified of the BE-180 report by the BEA and do not have a BE-180 identification number.

Financial services providers required to file the BE-180 report may contact the BEA to request a sixty day filing extension. Additional information regarding the BE-180 report is available at <http://www.bea.gov/ssb/be180/>.

Questions or Assistance:

If you would like to discuss the foregoing in further detail, please contact Peter Bilfield at (203) 324-8151, or pbilfield@goodwin.com, or Michael Cummings at (203) 324-8173, or mcummings@goodwin.com.

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