

TIC Form SLT Filing Considerations for Investment Managers

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SEWARD & KISSEL LLP

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I. Introduction

Introduction

- Who reports?
 - U.S. Resident End Investors
 - U.S. Resident Issuers
 - U.S. Resident Custodians
- What is reported?
 - Securities issued by U.S. Resident Issuers to foreign residents
 - Foreign securities owned by U.S. Resident End-Investors not held by a U.S. Resident Custodian
- What is the reporting threshold?
 - \$1 Billion
- When does a reporting person file?
 - Quarterly in 2011, and monthly beginning January 2012

Introduction

- How does a reporting person file?
 - With the NY Federal Reserve Bank.
 - Electronically, by mail or by fax.
- Link to form and instructions:
 - <http://www.treasury.gov/resource-center/data-chart-center/tic/Pages/forms-slt.aspx>

II. Who is required to file TIC Form SLT?

Reporting Persons

“U.S. Resident End Investor”

- A U.S. Resident End Investor must report all foreign securities it holds, except:
 - A U.S. Resident End Investor **does not report** foreign securities held with a U.S. Resident Custodian.
- A Delaware LP feeder fund investing in a Cayman Islands Ltd. master fund.
- An investment vehicle organized as a Delaware LP that invests in foreign securities that does not use a U.S. Resident Custodian.
- A Cayman Islands Ltd. master fund investing in foreign securities, that has a Delaware LP feeder fund.

Reporting Persons

“U.S. Resident Issuer”

- U.S. Resident Issuers must report all securities issued to foreign resident investors.
- A U.S. Resident Issuer **does not report** securities issued to foreign investors where a U.S. Resident Custodian holds such securities.
- An investment vehicle formed as a Delaware LP with foreign entities and/or individuals subscribed as limited partners.
- A master fund formed as a Delaware LP with a Cayman Islands Ltd. feeder fund.
- A Cayman Islands Ltd. fund with a U.S. investment manager.

“U.S. Resident Custodian”

- Foreign securities owned by a U.S. entity but held by a U.S. Resident Custodian will be reportable by the U.S. Resident Custodian and will not count towards the \$1 billion threshold.
- Definition: A custodian legally established in the United States, including branches, subsidiaries and affiliates of foreign entities located in the United States.
 - Goldman Sachs & Co. (NY)
 - Goldman Sachs International (London)
- The custodian is the prime broker/custodian with which the funds contract (i.e., not the sub custodian).

Reporting Persons

- Reporting Persons may have an obligation to report in more than one category.
- E.g., An investment vehicle organized in the United States, such as a Delaware LP, investing in foreign securities and issuing interests to foreign investors will report both as a U.S. Resident End Investor and a U.S. Resident Issuer.

III. How does an investment manager calculate the \$ 1 billion reporting threshold?

Timing

\$1 Billion Threshold is calculated:

- For 2011, as of the last day of the quarter (September 30, 2011 and December 31 2011).
- For 2012 and thereafter, as of the last day of the month.
- Using settlement date accounting on such dates.

Is the Security a U.S. Security or a Foreign Security?

- The determination is based on the country in which the entity issuing the security is legally established.
- Securities traded or issued in the United States are foreign securities if the issuer is legally established outside the United States.

Reportable Securities

- Included:

- Common stock
- Limited partnership interests
- Debt with multiple call options (if any maturity date is greater than one year from date of issue)
- Asset-backed securities
- Depositary receipts, e.g., ADRs (reported as U.S. end investor holding foreign securities)
(non-exhaustive list)

- Excluded:

- Derivative contracts (including swaps)
- Bank deposits
- Precious metals
- Currencies
- Loans & loan participations
(non-exhaustive list)

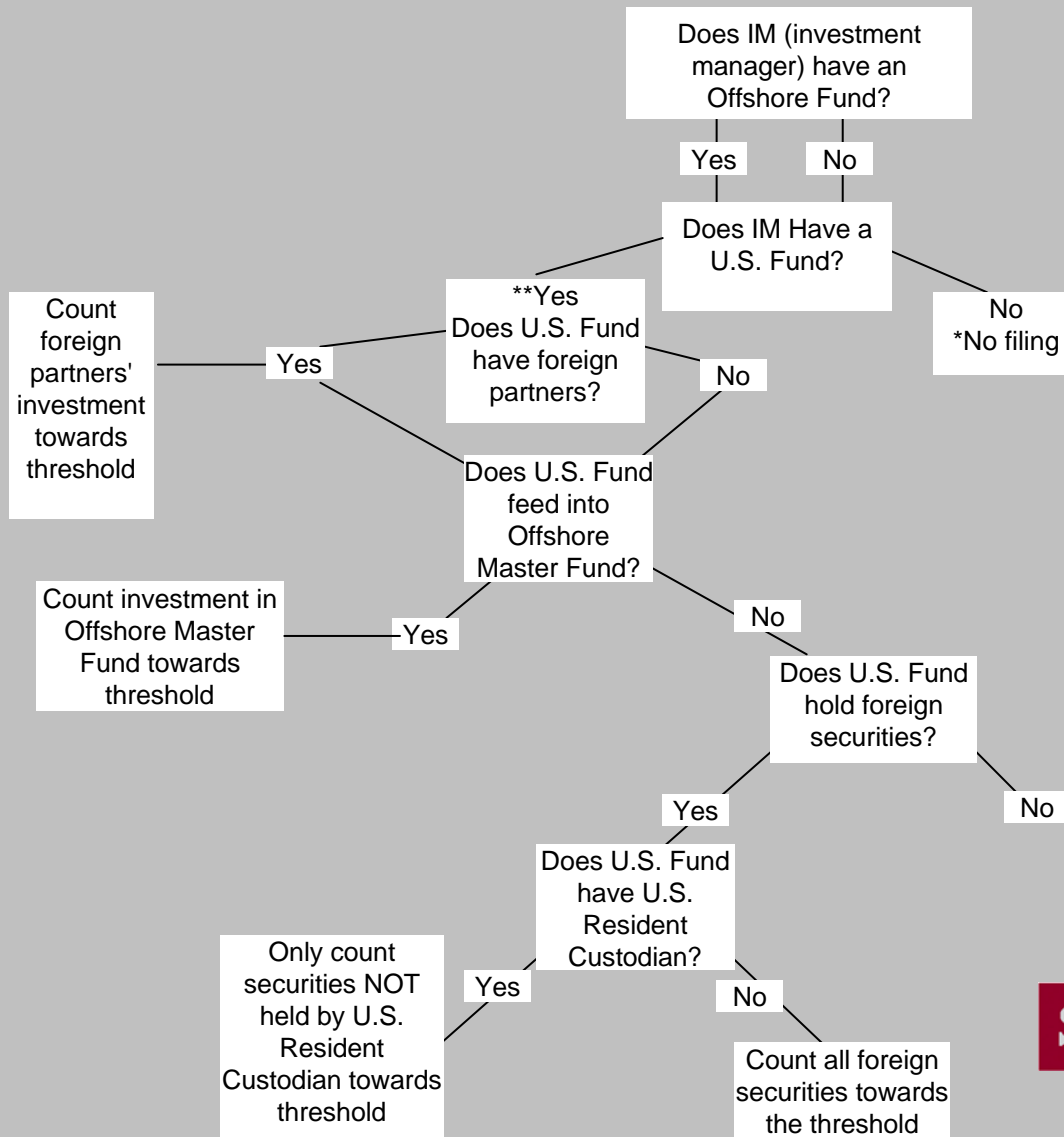
Valuation

- Report fair value of securities as of the last business day of the month (as defined by ASC 820 (formerly FAS 157)).
- Gross long positions should be reported.
- Do not net short positions.
- Do not exclude securities bought with leverage.
- The fair value of foreign currency denominated securities should be converted into U.S. dollars using the spot exchange rate as of close of business on the date of calculation.

Valuation

- The AUM of an investment manager or the net assets of an investment vehicle are not the indicators used to determine if the \$1 billion threshold has been met.

Do I have a filing obligation?



* IMs with managed accounts may have reporting requirements, please contact your primary attorney in Seward & Kissel's Investment Management Group.

** If US IM, add up all reportable holdings for all domestic LPs to see if the sum of reportable holdings exceeds the threshold.

Consolidation - Funds

- A U.S. resident investment manager will report on behalf of all U.S. funds and accounts it manages.
- A foreign resident investment manager does not have a reporting requirement, but each U.S. fund or account managed by the foreign resident investment manager that meets the \$1 billion dollar threshold will be required to report on a separate basis.

Consolidation – Management Entities

- U.S. resident entities file a consolidated report for all U.S. subsidiaries.
- If the U.S. subsidiaries are owned by a natural person, then there is no consolidation and each U.S. subsidiary must file independently if it meets the \$1 billion threshold.

Other Noteworthy Points

- No look-through, i.e., a U.S. feeder fund investing in a Cayman Islands master fund only reports Cayman Islands shares, not the foreign securities held by the master fund.
- Natural persons have no filing obligation.
- A U.S. investment manager may have a filing obligation as a U.S. Resident Custodian for:
 - Certain types of omnibus accounts.

IV. When is a reporting person required to file?

Requirements for 2011

- Quarterly reporting commences with the period ending September 30, 2011.
- TIC Form SLT is due 23 days after the reporting period ends.
- If the 23rd day is a holiday or a weekend, the TIC Form SLT is due on the first business day after the 23rd.
- First report for 2011 is due by October 24, 2011.

Requirements for 2012 and Beyond

- Monthly reporting commences with the period ending January 31, 2012.
- TIC Form SLT is due on the 23rd day of the month after the reporting period ends.
- If the 23rd day is a holiday or weekend, the Form SLT is due on the first business day after the 23rd.
- First report for 2012 is due by February 23, 2012.

V. How does a reporting person file?

Filing

- All reporting persons that are not banks, depository institutions, bank holding companies or financial holding companies file with the Federal Reserve Bank of New York.
 - This category includes investment managers.
- Reporting persons are assigned a reporter ID number, which can be obtained from the Federal Reserve Bank of New York.

Filing

- File electronically using the Federal Reserve System's Internet Submission Electronic Submission System.

OR

- File by mail to:
Federal Reserve Bank of New York
Statistics Function, 4th Floor
33 Liberty Street
New York, New York 10045

OR

- File by fax to the Federal Reserve Bank of New York at 212-720-8028 or 212-720-8216.

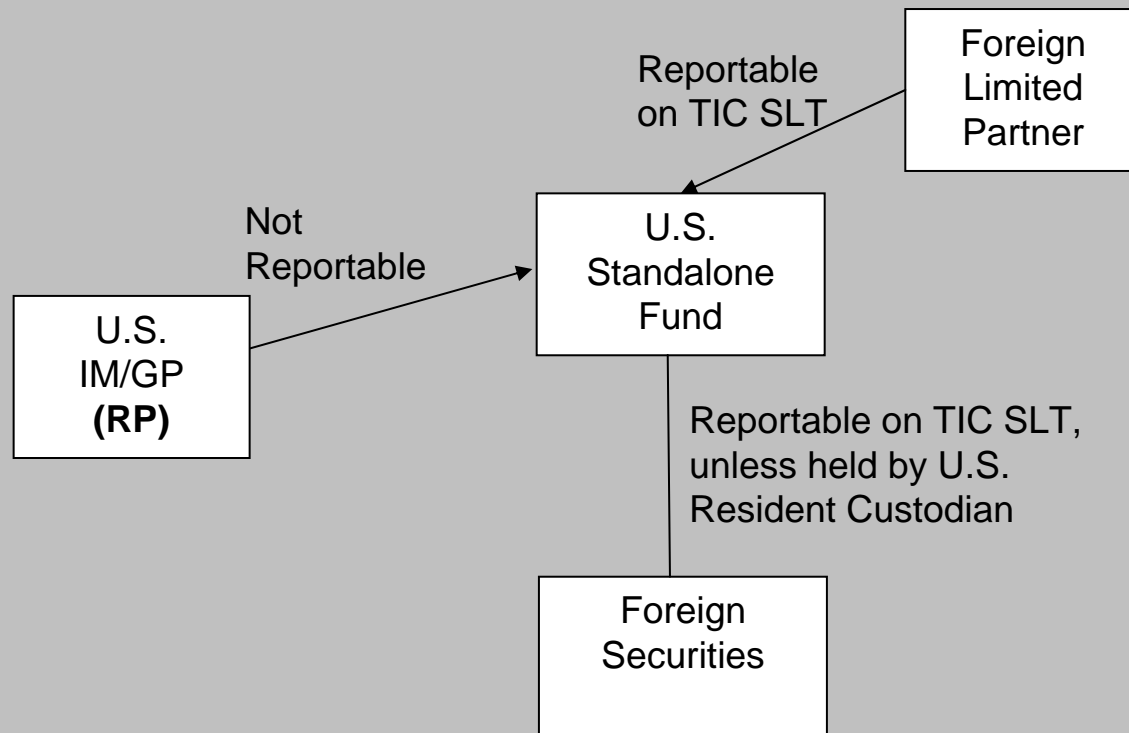
Confidentiality

- Data reported on TIC Form SLT will be held in confidence by the Department of Treasury, the Board of Governors of the Federal Reserve System, and the Federal Reserve Banks.
- Data reported by individual respondents will not be published or otherwise publicly disclosed.
- Data may be given to the Board of Governors of the Federal Reserve System and to other Federal agencies, as authorized by applicable law.
- There is no indication that the TIC Form SLT will not be subject to FOIA requests.

VI. TIC Form SLT Scenarios

Scenarios

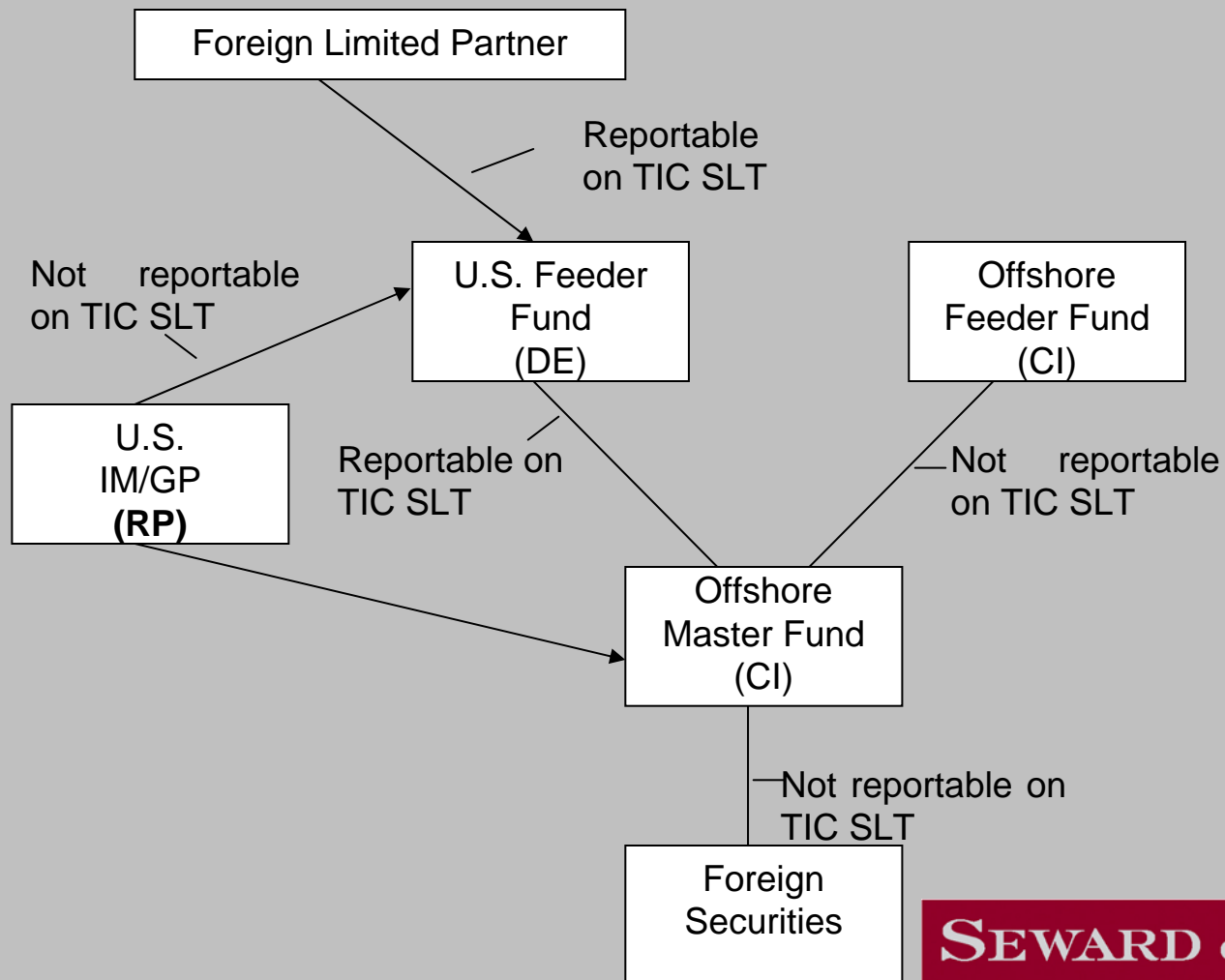
(Assumes the \$1 billion threshold has been met)



RP = Reporting Person

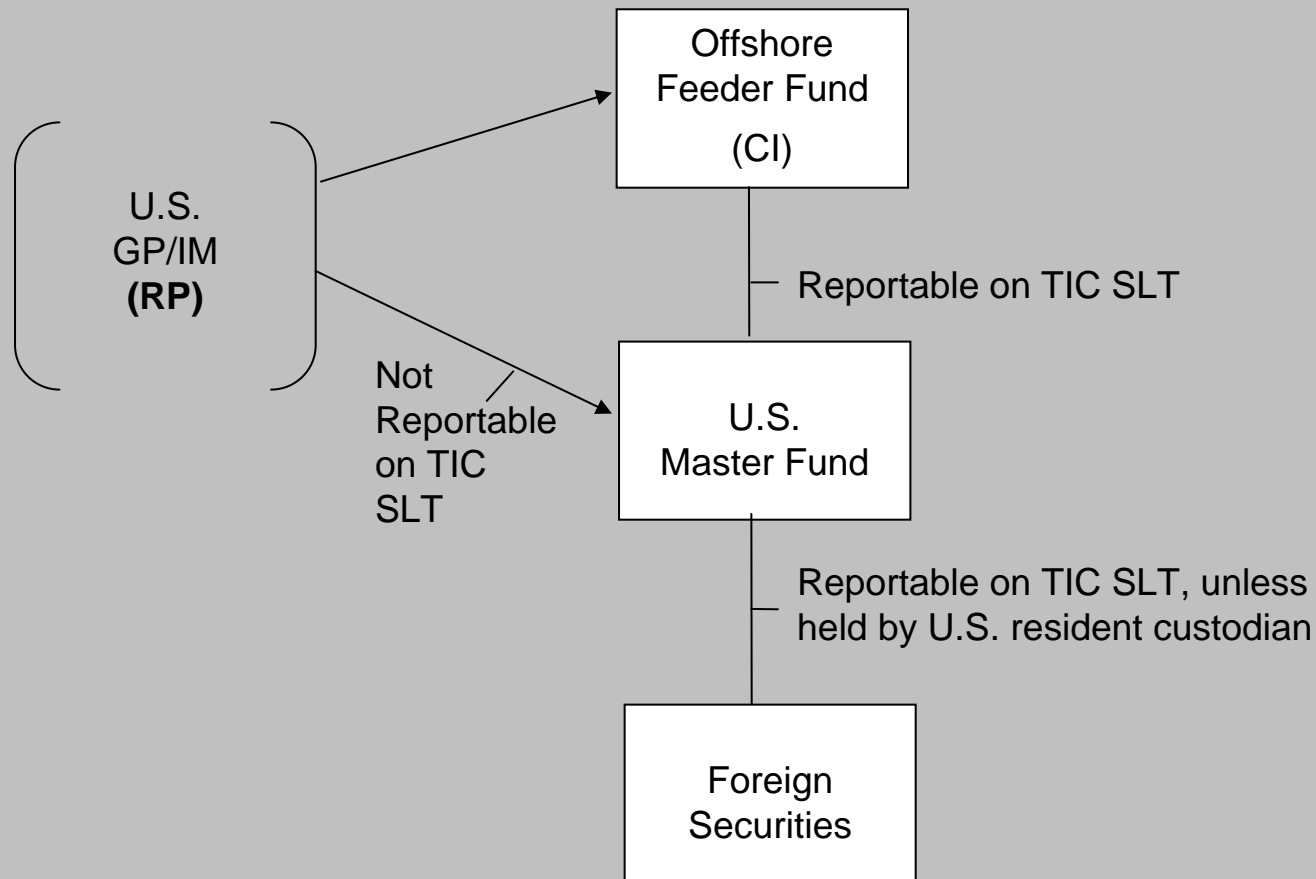
Scenarios

(Assumes the \$1 billion threshold has been met)

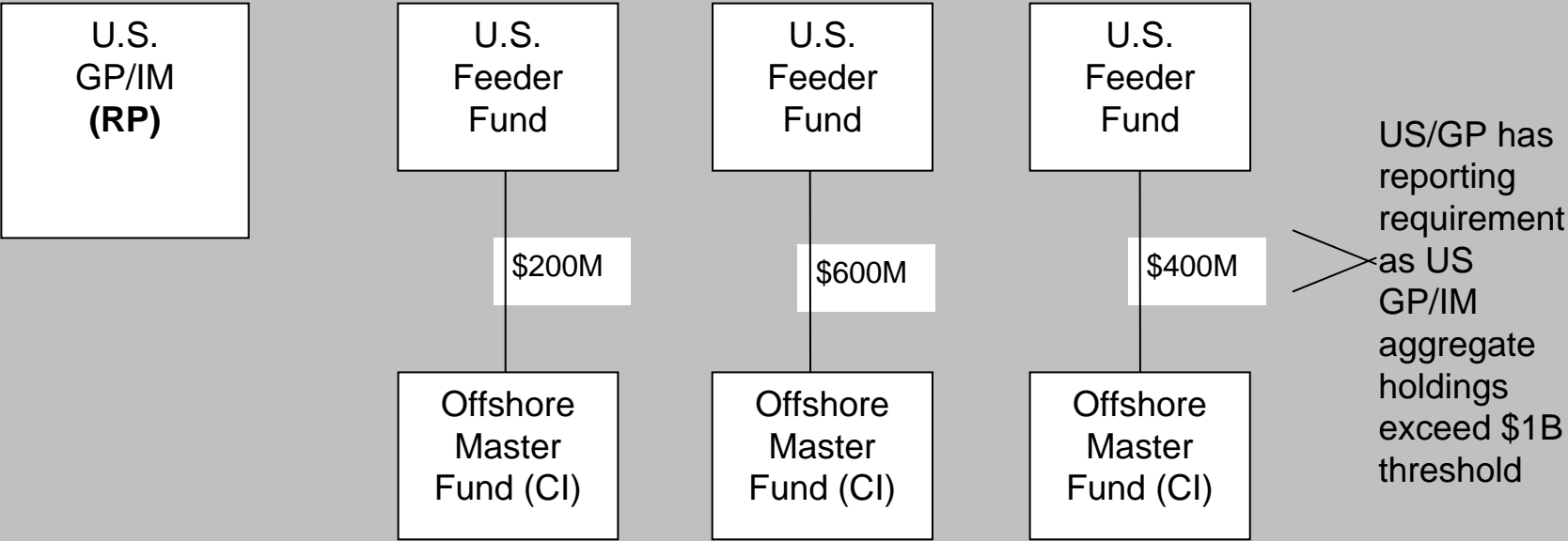


Scenarios

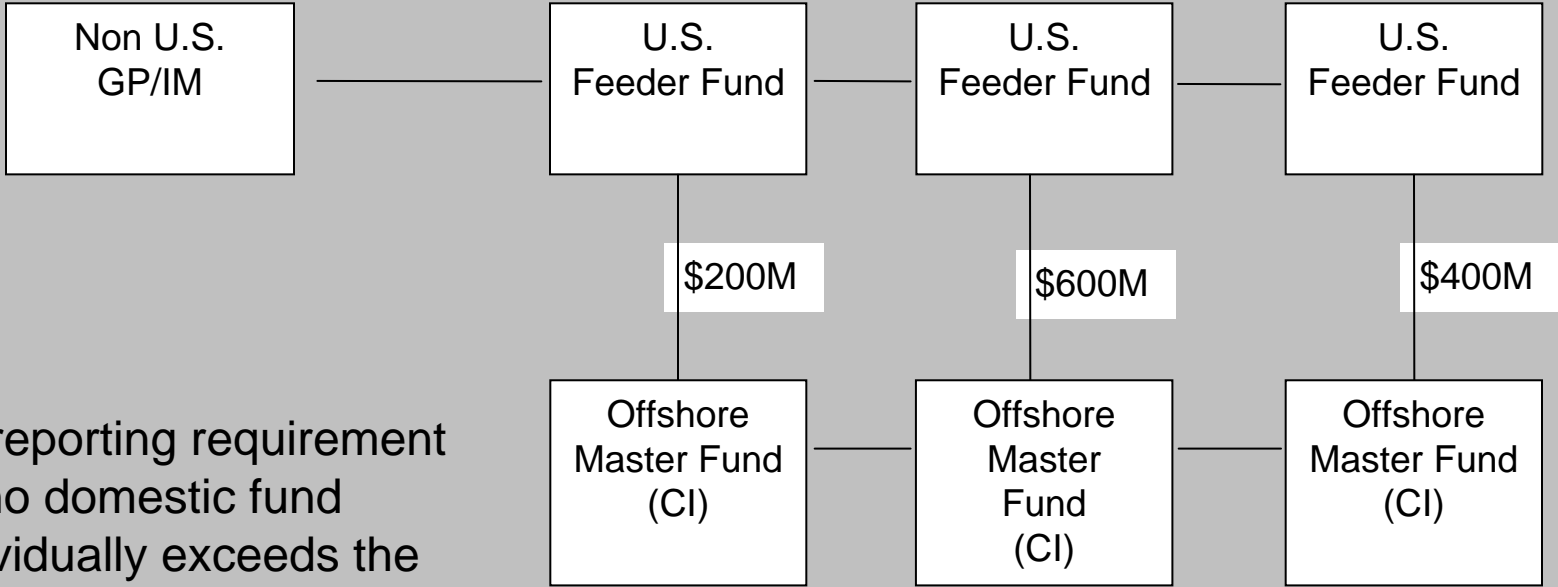
(Assumes the \$1 billion threshold has been met)



Scenarios



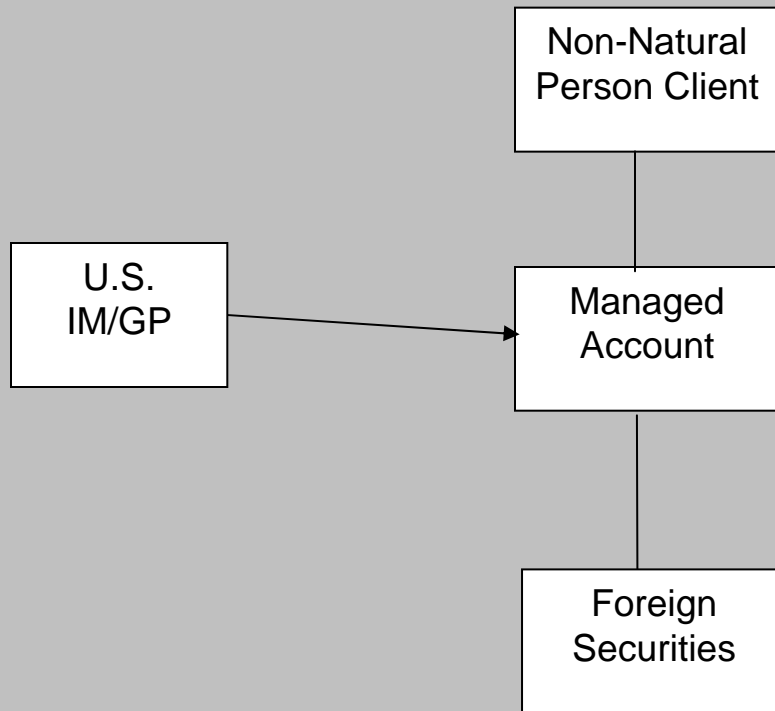
Scenarios



No reporting requirement as no domestic fund individually exceeds the \$1B threshold

Scenarios

(Assumes the \$1 billion threshold has been met)



US IM & client must consult with Federal Reserve to determine which entity will be subject to the reporting requirement. In general, the entity (the IM or the managed account client) with the higher level of reportable holdings will have the reporting requirement.

VII. Questions

VIII. Speaker Biographies

John E. Tavss

John E. Tavss is the head of Seward & Kissel's Investment Management Group. John has practiced at the Firm since 1979, and has been a partner since 1988.

John advises clients on a wide variety of securities, tax and business law matters relating to the investment management business. John has significant expertise in the investment management area including the representation of "hedge funds," other private investment vehicles (both onshore and offshore) and private equity funds. John is a frequent speaker on "hedge fund" and other private investment fund issues.

John is a member of the New York State Bar Association (Tax Section) and the International Bar Association (Private Funds Section). John is actively involved with a not-for-profit organization supported by the hedge fund industry dedicated to the prevention and treatment of child abuse.

John has been regularly recognized in Chambers Global, Chambers USA and The International Who's Who of Business Lawyers as a leading fund formation lawyer for private investment funds.

John can be reached at (212) 574-1261 or tavss@sewkis.com.

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Steven B. Nadel

Steven B. Nadel is a partner in Seward & Kissel's Investment Management Group. He joined the Firm in 1997. He is also the founding editor of *The Private Funds Report*, the Group newsletter.

Steve has extensive experience in issues relating to the establishment and ongoing operation of hedge funds, funds of funds (U.S. and offshore), private equity funds, separate accounts, registered investment advisers, commodity pool operators and commodity trading advisers, as well as related matters, including management company structuring, fund marketing, employment agreements, solicitation agreements, joint ventures, seed capital arrangements, regulatory compliance and general organizational matters.

Steve is a member of the American Bar Association and the New York State Bar Association. Steve also sits on the Boards of Directors of the charities Hedge Funds Care and the RBaby Foundation.

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Patricia A. Poglinco

Patricia A. Poglinco is a partner in Seward & Kissel's Investment Management group. Pat joined Seward & Kissel in 1986 and has been a partner since 1994.

Pat's practice specialties include the representation of investment advisers and related regulatory compliance; the formation and representation of private investment partnerships, group trusts and various offshore investment vehicles; the formation and CFTC registration of commodity pools, commodity pool operators and commodity trading advisors; the formation and ongoing representation of registered investment companies (open-end and closed-end funds) and their managers, distributors, underwriters and other service providers; and general securities and general corporate matters.

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Robert B. Van Grover

Robert B. Van Grover is a partner in Seward & Kissel's Investment Management Group. He joined the Firm in 1997.

Rob specializes in the formation and representation of private funds (U.S., offshore, single and multi-strategy, fund of funds and private equity), investment advisers (federal or state registered and non-registered), broker-dealers, commodity pool operators and commodity trading advisers. Rob advises clients on a wide variety of securities, tax and business law matters relating to the investment management business, including compliance and regulatory matters, fund and management company structuring, counseling on mergers and acquisitions, buy-sell agreements, employment matters, non-compete and confidentiality agreements, marketing and distribution arrangements and presentation materials, joint ventures, seed capital arrangements, soft dollar and other brokerage arrangements, and general organizational matters.

Rob is a member of the American Bar Association (Business Section) and the International Bar Association.

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