

**Form BE-180: The Latest BEA Report Potentially Applicable to
Investment Managers and Broker-Dealers**

The U.S. Commerce Department's Bureau of Economic Analysis (the "BEA") recently released another mandatory report: the BE-180, a five-year benchmark survey that collects data on transactions between U.S. persons that are financial services providers and non-U.S. persons. The BE-180 requirements follow the BEA's announcements earlier this year regarding the BE-10 and BE-13 surveys.

As discussed below, given the broad definition of firms subject to BE-180 reporting requirements, investment advisers and broker-dealers registered with the Securities and Exchange Commission should promptly and carefully evaluate whether they may be required to file responses, even if they have not previously responded to BEA surveys.

Firms Required to Report

All U.S. entities that are "financial services providers" that meet the financial reporting threshold must file a BE-180 report. A "financial services provider" includes, among others, a party that provides: (i) brokerage services related to equity transactions; (ii) "other brokerage" services; (iii) underwriting and private placement services; (iv) financial management services; (v) credit-related services; (vi) credit card services; (vii) financial advisory and custody services; (viii) securities lending services; (ix) electronic funds transfer services; and (x) other financial services.

The financial management category, in particular, may apply to many investment managers. The BEA's instructions specify that investment managers should report fees (including incentive allocations) for transactions in which the manager has the authority to direct the use or investment of funds or other assets. This includes the management of foreign commodity pools, mutual funds, hedge funds, private equity funds, and trusts.

Importantly, the BEA has stated that investment managers of hedge funds, private equity funds and other private funds and separate accounts are "financial services providers." "Financial services providers" also include broker-dealers, including "in-house" limited purpose broker-dealers placing interests in a manager's funds, and placement agents in secondary transactions.

A BE-180 report is required from each U.S. person that is a "financial services provider" that (i) had sales OR purchases of financial services with non-U.S. persons in excess of \$3,000,000 for fiscal year 2014 (the "Reporting Threshold"); or (ii) has been contacted by the BEA, even if the Reporting Threshold is not met. Please note that the \$3 million threshold applies separately to sales and purchases; this means that mandatory reporting requirements may apply only to sales, only to purchases, or to both sales and purchases. As an example, a U.S. investment manager that received more than \$3,000,000 of management fees from its non-U.S. "clients" for investment management services in 2014 will be required to file a BE-180 report. Broker-dealers (including placement agents) that received fees in connection with placement services to non-U.S. investors would also be required to report on BE-180, if the Reporting Threshold is satisfied. The report covers the company's 2014 fiscal year, and only one form is required per consolidated U.S. entity.

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For the sake of clarity, the BEA has confirmed that if a U.S. person that is a “financial services provider” has not been contacted by the BEA, and sales and purchases of financial services to non-U.S. persons do not meet the Reporting Threshold, that U.S. firm is not required to file a BE-180 report.

As context, the BE-180 was formerly required to be filed only by firms contacted by the BEA and which met the filing criteria. The first requirement has been eliminated: a firm that is subject to the reporting requirements of the BE-180 is required to respond regardless of whether it was contacted by the BEA.

When to Report

The deadline to file the BE-180 report is October 1, 2015. However, on its own, the BEA has granted automatic extensions to the filing deadline, as follows:

- If the U.S. Reporter was notified of the BE-180 survey by the BEA and has a BE-180 identification number below 140012490, then the reporter must file with the BEA no later than November 1, 2015;
- If the U.S. Reporter was notified of the BE-180 survey by the BEA and has a BE-180 identification number above 140012490, then the reporter must file with the BEA no later than December 1, 2015; and
- If the U.S. Reporter was not notified of the BE-180 survey by the BEA and does not have a BE-180 identification number, then the reporter must file with the BEA no later than November 1, 2015.

As with other required filings, the BEA will grant additional extensions to the filing deadline if requested in writing. The deadline for doing so in relation to a BE-180 filing is November 1, 2015.

The BE-180 survey (in fillable PDF and Excel formats) and instructions on how to file for an extension may be found on the BE-180 website.

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