

New Investment Survey Report Required for U.S. Entities, Including Private Funds, with Foreign Investments and Subsidiaries

PENpoints

The reporting requirements for the recently announced BEA survey of overseas investment applies to all U.S. entities, regardless of whether they were specifically requested or notified by the BEA.

The U.S. Department of Commerce, Bureau of Economic Analysis (“BEA”) recently announced reporting requirements for its “benchmark” survey of U.S. overseas investment.¹ These requirements cover all U.S. entities (including private funds) as well as individuals that at any time during such person’s 2014 fiscal year owned, directly or indirectly, 10 percent or more of the “voting stock” of a non-U.S. entity. Unlike in the past, a U.S. entity must participate in the 2014 Benchmark regardless of whether it was specifically requested or notified by the BEA.

The filing deadline is **May 29, 2015**, or **June 30, 2015**, if 50 or more forms must be filed. If an extension is needed, a request should be sent to the BEA.

A U.S. private fund must file a BE-10 Benchmark Survey Report if it directly owned 10 percent or more of the “voting stock” of a non-U.S. entity during 2014 (and “voting stock” includes voting securities of a non-corporate entity).² Where a fund only indirectly owned 10 percent or more of the voting stock of a non-U.S. entity (such as when a U.S. portfolio company had foreign subsidiaries), the fund may be able to avoid the reporting requirement if the BEA authorizes the portfolio company to file required reports rather than the fund itself (which authorization will typically require a commitment that the fund will cause the portfolio company to make the filings).³ Absent such authoriza-

tion, the fund will need to make the required filings.

If BE-10 reporting is required, the U.S. private fund must file a report about its domestic business,⁴ and separate reports about the applicable portfolio company and all non-U.S. entities in that ownership chain. So, for example, if a U.S. private fund purchased a Belgian company using a Luxembourg SARM, the fund will need to file a report about itself, the Luxembourg entity, the Belgian entity and all of its other direct and indirect non-U.S. subsidiaries, although it can consolidate into one form subsidiaries in the same country and industry classification.⁵

Failure to comply with these filing requirements may result in civil penalties or even criminal penalties for a willful failure to file.

If you have any questions about the matters addressed in this *KirklandPEN*, please contact the following Kirkland author or your regular Kirkland contact.

INSIDE KIRKLANDPEN

<i>PENbrief</i>	2
<i>Upcoming Events</i>	2

- 1 Benchmark surveys are conducted every five years and seek more detailed information than the BEA’s annual surveys.
- 2 A nonvoting security, such as a limited partnership interest, is not “voting stock” and thus does not trigger a reporting requirement.
- 3 Similarly, if a private fund was a greater-than-10 percent direct or indirect minority investor but either lacks access to sufficient information to make the filings or another party (e.g., the portfolio company or the controlling investor) will complete the required reports, the fund may ask the BEA to be excused from filing for that investment.
- 4 Information on the reports is confidential and cannot be subpoenaed or otherwise used in any legal proceeding. In addition, the fund will not be required to disclose LP-level information.
- 5 There are multiple BE-10 report forms. Which one should be filed generally depends on the U.S. entity’s ownership level and the size of the non-U.S. entity’s operations.

More information on the BE-10 reporting requirements is available at the [BEA's website](#).

Joanna M. Ritcey-Donohue
<http://www.kirkland.com/jritcey-donohue>
 +1 202-879-5980

PENbriefs

SEC Proposes Pay Versus Performance Proxy Disclosure Rules

The SEC recently proposed proxy disclosure rules under the Dodd-Frank Act addressing the relationship between executive compensation actually paid and the company's financial performance. To learn more, see our recent [Alert](#).

PENnotes

**PLI Delaware Law Developments 2015:
 What All Business Lawyers Need to Know**
 New York, NY
 June 4, 2015

The top Delaware corporate law experts from the Delaware judiciary, leading law firms and corporations, and academia will examine the latest case law and practical trends and share their real-world experiences, insights and advice on the issues of greatest concern to the corporate/securities legal community. Kirkland partner Yosef Riemer will discuss key issues in appraisal cases. Click [here](#) for more information.

Deal Dynamics
 Chicago, IL
 June 23, 2015

Kirkland & Ellis and Major, Lindsey & Africa are hosting a breakfast CLE discussion for general counsel and M&A and securities counsel from the greater-Chicagoland area to highlight certain challenges and opportunities in the acquisition and integration of private targets by public companies. Kirkland partners Kevin Morris and John Lausch will participate in the panel discussion. More information to follow.

Structuring and Negotiating LBOs
 San Francisco, CA
 September 10, 2015
 New York, NY
 September 24, 2015
 Chicago, IL
 October 1, 2015

This biennial event, chaired by Kirkland partner Jack Levin, focuses on the legal, tax, structuring and practical negotiating aspects of buyouts and other complex private equity deal-doing. More information to follow.

PLI Hot Topics in Mergers & Acquisitions 2015
 Chicago, IL
 September 16, 2015
 New York, NY
 October 2, 2015

An expert faculty of lawyers, general counsel, regulators and investment bankers will explore the state of M&A and trends for the year ahead. Kirkland partners Scott Falk and Sarkis Jebejian are co-chairs of the event. Click [here](#) for more information.

Private Equity Practice at Kirkland & Ellis

Beijing
 Chicago
 Hong Kong
 Houston
 London
 Los Angeles
 Munich
 New York
 Palo Alto
 San Francisco
 Shanghai
 Washington, D.C.

Kirkland & Ellis' nearly 400 private equity attorneys have handled leveraged buyouts, growth equity transactions, recapitalizations, going-private transactions and the formation of private equity, venture capital and hedge funds on behalf of more than 400 private equity firms around the world.

Kirkland has been widely recognized for its preeminent private equity practice. The Firm was named "Private Equity Group of the Year" in 2012, 2013 and 2014 by *Law360* and was commended as being the most active private equity law firm of the last decade in *The PitchBook Decade Report*. Kirkland & Ellis was named "Law Firm of the Year" in Mergers and Acquisitions Law by U.S. News Media Group and Best Lawyers in their 2014 "Best Law Firms" rankings. The Firm was named "Best M&A Firm" at *World Finance's* 2014 Legal Awards, "North American Law Firm of the Year: Fund Formation" and "North American Law Firm of the Year: Transactions" at Private Equity International's 2014 Private Equity International Awards and "Private Equity Deal of the Year" at the 2014 IFLR Americas Awards.

In 2012, 2013 and 2014, Chambers and Partners ranked Kirkland as a Tier 1 law firm for Investment Funds in the United States, United Kingdom, Asia-Pacific and globally. The Firm was ranked as the #1 law firm for both Global and U.S. Buyouts by deal volume in Mergermarket's *League Tables of Legal Advisors to Global M&A for Full Year 2011, 2012, 2013 and 2014*, and has consistently received top rankings among law firms in Private Equity by The Legal 500, the Practical Law Company and IFLR, among others.

The Lawyer magazine has recognized Kirkland as one of its "Transatlantic Elite" every year since 2008, having noted that the Firm is "leading the transatlantic market for the provision of top-end transactional services ... on the basis of a stellar client base, regular roles on top deals, market-leading finances and the cream of the legal market talent."

KIRKLANDPEN

KIRKLAND & ELLIS

EDITORS

Jack S. Levin, P.C.
 Margaret A. Gibson, P.C.
 Norbert B. Knapke II

SUBSCRIPTIONS

To subscribe to *KirklandPEN*, please email
kirklandpen@kirkland.com
 +1 (312) 862-3356

This publication is distributed with the understanding that the author, publisher and distributor of this publication and/or any linked publication are not rendering legal, accounting, or other professional advice or opinions on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use. Pursuant to applicable rules of professional conduct, portions of this publication may constitute Attorney Advertising.