

ALERTS

Treasury Issues Notices Extending FBAR Deadlines for Officers and Employees of Investment Advisers and Others

June 28, 2011

The U.S. Department of the Treasury (“Treasury”) has issued guidance with respect to the filing of reports of foreign financial accounts (“FBARs”) by officers and employees of investment advisers and others with different filing deadlines. Specifically, officers and employees of investment advisers registered with the Securities and Exchange Commission (“SEC”) who have only signature authority over foreign financial accounts, will now have until June 30, 2012 to file an FBAR. With respect to officers and employees of non-SEC-registered investment advisers and other entities, the filing deadline for 2009 and prior years will be Nov. 1, 2011, but the deadline for the year 2010 continues to be June 30, 2011.

Background Information

On Feb. 24, 2011, the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) issued final regulations relating to the filing of FBARs and reaffirmed the FBAR reporting requirement for persons with “signature or other authority” over foreign financial accounts.^[1]

Any U.S. person who has a financial interest in, or signature or other authority over, any foreign financial accounts, including bank, securities, or other types of financial accounts in a foreign country, must report that relationship each calendar year by filing an FBAR with the Treasury on or before June 30 of the succeeding year, if the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year.

The Treasury has previously issued Notice 2009-62 and Notice 2010-23, effectively extending until June 30, 2011, the deadline for filing FBARs for calendar year 2009 and for earlier calendar years for persons having only signature authority over a foreign financial account.

After the release of the final regulations, three additional filing extensions were granted:

Notice 2011-54: Additional Administrative Relief for Individuals Whose Filing Deadline Was Extended Under Notice 2010-23:

Individuals who deferred filing FBARs under Notice 2009-62 or Notice 2010-23 now have until Nov. 1, 2011, to file FBARs with respect to accounts for which they have only signature authority in a foreign financial account in 2009 or earlier calendar years. *The deadline for reporting signature authority over foreign financial accounts for the 2010 calendar year remains June 30, 2011.*

Notice 2011-2: Extended Filing Date Relating to Officers or Employees of Investment Advisers Registered With the Securities and Exchange Commission:

On June 17, 2011, FinCEN granted relief with respect to the filing of FBARs to those officers or employees of SEC-registered investment advisers who have signature or other authority over, but no financial interest in, foreign financial accounts of persons that are not investment companies registered under the Investment Company Act of 1940. The relief applies to the filing of FBARs for calendar year 2010 and any earlier year for which the filing deadline was properly deferred under Notice 2009-62 or Notice 2010-23. The new FBAR filing date for this category of persons is June 30, 2012.

Notice 2011-1: Extended Filing Date Related to Employees or Officers of Certain Financial Institutions (Revised):

On June 6, 2011, FinCEN granted an extension of the FBAR filing date to June 30, 2012, to allow the following individuals additional time to file:

1. An employee or officer of a regulated entity under 31 C.F.R. § 1010.350(f) (2)(i)-(v), e.g., a bank examined by federal regulators for compliance with the Bank Secrecy Act or a financial institution registered with, and examined by, the SEC or Commodities Futures Trading Commission, who has signature or other authority over, and no financial interest in, a foreign financial account *of a controlled person of the regulated entity*, or
2. An employee or officer of a *controlled person of a regulated entity* who has signature or other authority over, and no financial interest in, a foreign financial account of the regulated entity, the controlled person, or another controlled person of the regulated entity.

This extension covers U.S. officers or employees who have signature or other authority over, and no financial interest in, foreign financial accounts owned by foreign subsidiaries of a regulated entity.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors

[1]The final regulations are analyzed in our April 1, 2011, *Alert* available at: http://www.srz.com/O40111_Treasury_Clarifies_FBAR_Regulations_for_Private_Investment_Funds/.

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