

CLIENT MEMORANDUM

Reminder: Foreign Bank and Financial Accounts Report (“FBAR”) Filing Deadline of June 30, 2014 for 2013 FBAR New Mandatory E-Filing Deadline Re-Extended for Certain Signature Authority FBARs

May 30, 2014

AUTHORS

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A U.S. person with a financial interest in, or signature authority over, one or more foreign financial accounts with an aggregate value of more than \$10,000 during 2013 must file a Foreign Bank and Financial Accounts Report (“FBAR”) on or before June 30, 2014. Filers should note several developments since last year’s deadline:

- In December 2013, the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) issued Notice 2013-1, extending for certain filers the FBAR due date to June 30, 2015.
- An FBAR must be submitted electronically on FinCEN Form 114 (formerly known as TD F 90-22.1) using the Treasury Department’s Bank Secrecy Act (“BSA”) E-Filing System. Entity filers must enroll in the E-Filing System before submitting an FBAR. Individuals are not required to enroll but are required to file using the system.
- A third party, such as an accountant or tax adviser, may prepare and submit the FBAR electronically on a filer’s behalf if both the filer and preparer have executed a FinCEN Form 114a, Record of Authorization to Electronically File FBARs.

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In Notice 2013-1, FinCEN extended for certain filers the due date for Form 114 to June 30, 2015.¹ This Notice was preceded by four earlier extensions that applied to similarly situated individuals. With respect to reporting signature authority over, but no financial interest in, foreign financial accounts during 2013 and preceding years, the latest extension specifically applies to:

- Officers and employees of banks, publicly traded corporations, and certain other entities specified in the FBAR regulations (each a “specified entity”) who had signature authority over, but no financial interest in, the foreign financial accounts of a person that is “controlled” (i.e., more than 50% owned, directly or indirectly) by their employer;
- Officers and employees of a person controlled by a specified entity who had signature authority over, but no financial interest in, the reportable foreign accounts of the controlled person of which the individual is an officer or employee, or the reportable accounts of the controlling entity or its other controlled persons; and
- Officers and employees of investment advisers registered with the U.S. Securities and Exchange Commission who had signature authority over, but no financial interest in, the foreign financial accounts of persons that are *not* investment companies registered under the Investment Company Act of 1940.

This new FinCEN Notice extends the previous deadline of June 30, 2014 set for these filers last year in Notice 2012-2.²

MANDATORY ELECTRONIC FILING

As of July 1, 2013, the Treasury Department required that FBARs be filed electronically using FinCEN’s BSA E-Filing System. The FBAR regulations have not changed, but the former FBAR form TD F 90-22.1 was revised and redesignated as FinCEN Form 114.³ The mandatory electronic filing requirement applies to all FBARs submitted by entities or individuals on or after the effective date and to all amendments of previously filed FBARs, irrespective of whether the original FBAR was filed on paper. FinCEN no longer accepts paper FBARs and failure to file in the required electronic format may result in a civil penalty. All filers should carefully read the instructions for completion of the electronic FBAR.

An entity preparing to file an FBAR electronically for the first time must enroll in the E-Filing System through an online process, which includes designating a responsible individual as the organization’s “Supervisory User,” creating a user

¹ Notice 2013-1 may be viewed [here](#).

² The categories of individuals affected by Notice 2013-1 were identified and previously granted extensions by FinCEN in [Notice 2012-2](#), [Notice 2011-1](#), [Notice 2011-2](#), and [Notice 2012-1](#).

³ Detailed information and instructions for completion of the electronic FBAR and related information are available [here](#).

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name and password, and completing certain additional steps.⁴ There is no enrollment fee. An individual FBAR filer is not required to register, but may view, complete, and submit Form 114 at the FinCEN website.⁵ Using the E-Filing System enables FBAR filers to track the status of their FBARs, receive confirmations of receipt by FinCEN, and view information regarding prior filings.

Firms that are “financial institutions” within the meaning of the Bank Secrecy Act — including mutual funds and broker-dealers — should already be enrolled in the E-Filing System pursuant to the 2012 deadline for mandatory electronic filing of other BSA forms, including Suspicious Activity Reports and Cash Transaction Reports. Such firms need not enroll again to file electronic FBARs.

AUTHORIZATION FOR THIRD-PARTY PREPARERS

On July 29, 2013, new FinCEN Form 114a, Record of Authorization to Electronically File FBARs, was issued for use by a person who has an obligation to file an FBAR but wishes to have a third-party preparer—such as the filer’s accountant or tax adviser—complete and submit the FBAR electronically on the filer’s behalf.⁶ However, Form 114a should not ordinarily be used when an entity relies on an in-house employee to prepare the employer’s FBAR as part of the employee’s usual professional duties and has designated the employee as its Supervisory User during the initial enrollment process. In general, the authorized preparer (if an individual) or the preparer’s firm must be enrolled in the BSA E-Filing System and file as an “institution” rather than an individual.

The person with the FBAR obligation and the authorized preparer must each sign Form 114a and retain a copy of the form and of the corresponding FBAR for a period of five years. The revised FBAR form includes space for the electronic signature of the preparer.

Form 114a may also be used to authorize a spouse to submit an FBAR on behalf of the other spouse for jointly owned foreign accounts. The spouse submitting the joint FBAR does not have to enroll in the E-Filing System but should complete Part III of the individual FBAR with respect to such jointly owned accounts according to the instructions.

FBAR FILING OBLIGATION

Each U.S. person, including a citizen or resident of the United States and any entity organized under the laws of the United States, is required to file an FBAR, using FinCEN Form 114, with the U.S. Treasury Department by June 30th of each year with respect to foreign financial accounts that had an aggregate value of more than \$10,000 and that the person had a financial interest in, or signature authority over, during the previous calendar year. Failure to file the FBAR,

⁴ Enrollment instructions may be accessed [here](#).

⁵ Information for individual filers is available [here](#).

⁶ Form 114a may be viewed [here](#).

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which requires basic information about foreign domiciled accounts, can result in significant civil and/or criminal penalties.⁷ FBAR filers (entities and individuals) may have certain disclosure obligations regarding foreign financial accounts on their income tax returns and should consult their tax advisors on this matter.

If you have any questions regarding this memorandum, please contact Joseph A. Riley (212-728-8715, jriley@willkie.com), Barbara Block (202-303-1178, bblock@willkie.com), or the Willkie attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is an international law firm with offices in New York, Washington, D.C., Paris, London, Milan, Rome, Frankfurt and Brussels. The firm is headquartered at 787 Seventh Avenue, New York, NY 10019-6099. Our telephone number is (212) 728-8000 and our fax number is (212) 728-8111. Our website is located at www.willkie.com.

May 30, 2014

IRS Circular 230 disclosure:

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⁷ For further information on the FBAR requirements generally, please see Willkie Farr & Gallagher LLP Client Memoranda: “Treasury Department Issues Revised Rules For Reporting Foreign Financial Accounts” (Mar. 16, 2011), available [here](#); “Update on Foreign Bank and Financial Account Reporting: IRS Issues Revised FBAR Form and Instructions” (Apr. 1, 2011), available [here](#); “Treasury Department Agencies Extend The ‘FBAR’ Deadline For Some Filers With Signature Authority Over Foreign Financial Accounts” (June 20, 2011), available [here](#); “Treasury Department Extends FBAR Deadline Until June 30, 2013 For Certain Filers” (Feb. 24, 2012), available [here](#); “Internal Revenue Service Has Revised FBAR-Related Questions on U.S. Form 1040, Schedule B” (Mar. 15, 2012), available [here](#); and “Treasury Department Extends FBAR Deadline Until June 30, 2014 for Certain Filers” (Jan. 18, 2013), available [here](#).