

**UPDATE: FOREIGN FINANCIAL ACCOUNT REPORTS
AND NON-U.S. INVESTMENT FUNDS****“FBAR” filings must be received by June 30, 2009**

This updates our Client Memorandum dated June 11, 2009. Each U.S. person having a “financial interest” in or “signature or other authority over” one or more bank accounts, securities accounts, or other financial accounts located in foreign countries the aggregate assets of which exceeded \$10,000 at any time during 2008 must file a report with the U.S. Department of the Treasury by June 30, 2009. The Report of Foreign Bank and Financial Accounts (the “FBAR”) is filed on Form TD F 90-22.1.

The foreign financial accounts covered by the filing requirement include any foreign “accounts in which the assets are held in a commingled fund, and the account owner holds an equity interest in the fund (including mutual funds).” We noted in our June 11 memorandum that the addition of “mutual funds” as included commingled funds represented an expansion of the definition of foreign financial accounts. We also noted that to date the Treasury Department had provided no guidance as to the applicability of this definition to non-U.S. investment funds such as hedge funds and private equity funds that have limited liquidity and, thus, do not operate like bank or brokerage accounts.

On June 12, 2009, an IRS attorney, responding to questions regarding the FBAR requirements posed in a private teleconference, reportedly stated a personal view that an offshore hedge fund would fall within the definition of a “foreign financial account.” We do not expect additional guidance from the IRS prior to June 30, 2009.

Although U.S. holders of foreign mutual funds continue to have an obligation to file FBARs, there is continuing uncertainty regarding the definition of a “commingled fund.” Because of this, and given the unofficial position expressed by IRS staff and the substantial penalties potentially involved, a U.S. person with a sufficient equity interest in a non-U.S. investment fund or signature authority over such a fund should file an FBAR with respect to that non-U.S. investment fund.

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If you have any questions regarding this memorandum, please contact Russell L. Smith (202-303-1116, rsmith@willkie.com), Rita M. Molesworth (212-728-8727, rmolesworth@willkie.com), Benjamin Haskin (202-303-1124, bhaskin@willkie.com), Joseph A. Riley (212-728-8715, jriley@willkie.com), Barbara Anne Block (202-303-1178, bblock@willkie.com), or the attorney with whom you regularly work.

Willkie Farr & Gallagher LLP is headquartered at 787 Seventh Avenue, New York, NY 10019-6099 and has an office located at 1875 K Street, NW, Washington, DC 20006-1238. Our New York telephone number is (212) 728-8000 and our facsimile number is (212) 728-8111. Our Washington, DC telephone number is (202) 303-1000 and our facsimile number is (202) 303-2000. Our website is located at www.willkie.com.

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