

**REMINDER: REPORTS OF FOREIGN BANK AND FINANCIAL ACCOUNTS  
ARE DUE ON OR BEFORE JUNE 30, 2011**

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 a Form TD F 90-22.1 (“Report of Foreign Bank and Financial Accounts” or “FBAR”) with the U.S. Treasury Department by June 30, 2011, with respect to foreign financial accounts which had an aggregate value of more than \$10,000 and which the person had a financial interest in, or signature authority over, during calendar year 2010. Failure to file the FBAR, which requires basic information about foreign domiciled accounts, can result in significant civil and/or criminal penalties.

Revised FBAR regulations (the “final regulations”) took effect on March 28, 2011, and clarified a number of issues, including the definition of some key terms and details of the reporting requirements.<sup>1</sup> The Internal Revenue Service subsequently issued an updated version of Form TD F 90-22.1.<sup>2</sup>

On May 31, 2011, the Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) issued FinCEN Notice 2011-1, which delays the filing deadline for certain individuals.<sup>3</sup> The final regulations already provide an exception from FBAR reporting for officers and employees of certain types of entities who have signature authority but no financial interest in otherwise reportable accounts of the entity (the “specified list”).<sup>4</sup> The regulatory exception from reporting applies only to accounts of such entities themselves and to accounts of U.S. persons controlled by such entities but does not apply to accounts of non-U.S. persons controlled by such entities, such as foreign subsidiaries. FinCEN Notice 2011-1 provides a twelve-month extension, until June 30, 2012, for the filing of FBARs by employees and officers

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<sup>1</sup> For a description of the regulations, please see the Willkie Farr & Gallagher LLP Client Memoranda, “Treasury Department Issues Revised Rules for Reporting Foreign Financial Accounts” (Mar. 16, 2011), available [here](#), and “Update on Foreign Bank and Financial Account Reporting: IRS Issues Revised FBAR Form and Instructions” (April 1, 2011), available [here](#).

<sup>2</sup> The updated form may be viewed [here](#).

<sup>3</sup> The Notice may be viewed [here](#).

<sup>4</sup> The specified list includes: (i) banks or other depository institutions subject to functional regulation by a federal agency that also examines them for Bank Secrecy Act (“BSA”) anti-money laundering (“AML”) compliance; (ii) entities the shares of which are listed on any U.S. national securities exchange; (iii) a “financial institution” (as defined by the BSA) that is registered with and examined by the Securities and Exchange Commission (the “SEC”) or the Commodity Futures Trading Commission, an exception that generally covers officers and employees of registered securities broker-dealers, mutual fund advisers, futures commission merchants, and introducing brokers but does not generally apply to registered investment advisers because advisers are not “financial institutions” within the meaning of the BSA regulations; or (iv) “Authorized Service Providers” (defined as entities registered with and examined by the SEC that provide services to an investment company registered under the Investment Company Act of 1940) but *only* with respect to signature or other authority over a foreign financial account maintained by an investment company registered with the SEC.

of entities of a type on the specified list, with respect to reportable accounts of non-U.S. persons controlled by such entities. FinCEN Notice 2011-1 also provides a twelve-month extension to officers and employees of non-U.S. persons controlled by entities of a type on the specified list with respect to the reportable foreign accounts of other controlled persons and of the controlling entity. Under the wording of the Notice, this last exception apparently does not apply with respect to reportable accounts *of the controlled person for which the individual is an employee or an officer* but only to accounts of *other* controlled persons or of the controlling entity.

**The relatively short period between the effective date of the regulations and the June 30, 2011, reporting deadline is proving to be a challenge to many filers as they undertake the assembly and analysis of significant amounts of information to identify reportable accounts and prepare numerous FBARs without the option of electronic filing.**

Most prospective FBAR filers should have their review process well underway by this time or begin immediate preparations for a timely filing. FBARs for 2010 must be received by the Treasury Department at the usual Detroit, Michigan post office address designated in the instructions on or before June 30, 2011. This date is also the deadline for individuals with signature authority over, but no financial interest in, foreign financial accounts in 2009 or previous calendar years who deferred their 2009 filings in reliance on previous Treasury Department guidance.<sup>5</sup> **The FBAR regulations do not allow for extensions of the filing date.**

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If you have any questions regarding this memorandum, please contact Joseph A. Riley (212-728-8715, jriley@willkie.com), Russell Smith (202-303-1116, rsmith@willkie.com), Barbara Block (202-303-1178, bblock@willkie.com), or the Willkie attorney with whom you regularly work.

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June 1, 2011

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<sup>5</sup> IRS Notice 2010-23 postponed until June 30, 2011, the deadline for reporting by individuals with signature or other authority over, but no financial interest in, foreign financial accounts for 2009 or prior calendar years. Previously, IRS Notice 2009-62 had extended this deadline until June 30, 2010. According to the Treasury Department, individuals who relied on these IRS Notices and did not file FBARs in 2009 or 2010 may base their current determinations regarding the filing of prior year reports on the provisions of the new regulations that are favorable to them, as long as they properly deferred their FBAR filings in accordance with the previous IRS guidance.

IRS Circular 230 disclosure:

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