

IRS EXTENDS FBAR FILING DEADLINE FOR SIGNATORIES AND FOREIGN FUND INVESTORS

On August 7, 2009, the IRS issued Notice 2009-62 to extend the deadline of filing Form TD F 90-22.1 ("FBAR") in two limited situations. The extension applies to U.S. persons who have signature authority over, but no financial interest in, foreign financial accounts, and to U.S. persons with respect to investment in foreign "commingled funds" such as hedge funds. Under the Notice, these signatories and investors have until June 30, 2010 to file the FBAR for 2008 and prior years. A U.S. person not eligible for the extension under the Notice generally must file the FBAR by June 30, but if such person was unaware of the filing obligations until recently, the extended September 23, 2009 deadline announced by the IRS earlier this year may apply.

The IRS has recently indicated that "commingled funds" that are treated as "financial accounts" include mutual funds, hedge funds, and even private equity funds. However, there is no official guidance as to whether and under what circumstances an equity interest in a foreign entity should be treated as a "financial account" subject to FBAR reporting. The Treasury Department now intends to issue regulations to provide clarification. Such regulations may address when an interest in a foreign entity should be subject to FBAR reporting, whether the principles of "passive foreign investment company" should apply, and whether duplicative filing should be exempt. Similarly, such regulations may also address whether a signatory should be exempt from an FBAR obligation when the owner of the account files the FBAR, and whether officers and employees with only signature authority should not be required to file duplicative FBAR forms. Interested persons can submit comments and suggestions to the IRS and the Treasury Department by October 6, 2009.

To ensure compliance with requirements imposed by the IRS, we inform you that, unless explicitly provided otherwise, any U.S. federal tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

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FOR FURTHER INFORMATION, CONTACT:

ALAN S. BERLIN, PARTNER

E-MAIL: ABERLIN@CURTIS.COM
TEL: +1 (212) 696-6038

MARCO BLANCO, PARTNER

E-MAIL: MBLANCO@CURTIS.COM
TEL: +33 1-42-68-72-18

WILLIAM L. BRICKER, JR., PARTNER

E-MAIL: WBRICKER@CURTIS.COM
TEL: +1 (212) 696-6039

EDUARDO A. CUKIER, PARTNER

E-MAIL: ECUKIER@CURTIS.COM
TEL: +1 (212) 696-6107

CHRISTIAN FINGERHUT, PARTNER

E-MAIL: CFINGERHUT@CURTIS.COM
TEL: +49 69 247576 0

KUANG-CHU CHIANG, COUNSEL

E-MAIL: KCHIANG@CURTIS.COM
TEL: +1 (212) 696-6058

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