

March 3, 2011

Final FBAR Regulations - FBAR Filing Not Required for Offshore Private Funds for 2010

Summary. On February 23, 2011, the Financial Crimes Enforcement Network (“FinCEN”) of the Department of the Treasury issued Final Regulations with respect to the requirement to file Form TD-F 90-22.1, Report of Foreign Bank and Financial Accounts (“FBAR”). The Final Regulations are effective March 28, 2011, and apply with respect to foreign financial accounts maintained in calendar year 2010 (for which FBARs are required to be filed by June 30, 2011) and all subsequent calendar years.

Like the Proposed Regulations discussed in our March 2010 client alert,¹ the Final Regulations continue to reserve on whether filings will be required with respect to ownership interests in offshore private equity and hedge funds. As a practical matter, absent further guidance, we believe that such filings are not required for 2010.

Final Regulations. United States persons with financial interests in or signature or other authority over any foreign financial accounts with an aggregate value exceeding \$10,000 at any time during the calendar year must file an FBAR with respect to the account on or before June 30 of the succeeding year.² Foreign financial accounts are broadly defined, and include, among other things:

- Bank accounts – savings deposit, demand deposit, checking or any other account maintained with a person engaged in the banking business;
- Securities accounts – accounts with a person engaged in the business of buying, selling, holding or trading stock or other securities;
- Other financial accounts –
 - accounts that are insurance or annuity policies with a cash value;
 - accounts with a mutual fund or similar pooled fund which issues shares available to the general public that have a regular net asset value determination and regular redemptions.

¹ To read this alert, click [here](#).

² To read our June 2009 alert, which describes these requirements, click [here](#).

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this document 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 that is contained in this document.

The Final Regulations reserve on the definition of other types of funds that may trigger filing requirements. Unless and until there are further regulations, typical hedge and private equity funds are not included in any of the categories of accounts that the Final Regulations address. In particular, typical hedge and private equity funds are not included in the Final Regulations' definition of mutual fund or similar pooled fund because their interests are not issued to the general public and, in the case of private equity funds, they typically do not have regular net asset value determinations and redemptions.

Unless new regulations or other guidance explicitly providing that offshore hedge funds and private equity funds are financial accounts for purposes of the FBAR requirements are issued, as a practical matter, we believe that filings are not required with respect to such entities for 2010 and subsequent years.

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This memorandum is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. If you have questions regarding the foregoing, please contact:

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