

Update: New FBAR Extension for Investment Managers

June 22, 2011

In a last-minute change, officers and employees of investment advisers that are registered with the Securities and Exchange Commission, who have signature authority over (but no financial interest in) a foreign financial account will have until June 30, 2012, to file FBARs for calendar year 2010 and prior years for which the filing deadline was previously deferred. See FinCEN Notice 2011-2.

Accordingly, these officers and employees need not file 2010 FBARs on June 30, 2011, as previously announced, for foreign financial accounts of hedge funds, private equity funds, and separate accounts over which they have signature authority, so long as they have no financial interest in such accounts.

As we described in the Foley Adviser of June 21, 2011, an officer or employee of a registered investment adviser is also not required to file an FBAR to report signature authority over a foreign financial account of an investment company registered under the Investment Company Act of 1940 to which the registered investment adviser provides services, so long as the officer or employee has no financial interest in the account. This is a permanent exemption, not a deferral. The last-minute deferral granted for foreign financial accounts of other persons in addition to registered investment companies may indicate that the authorities are considering extending the permanent exemption to these accounts, as well.

In a separate development, the SEC announced today that it is extending until March 30, 2012, the deadline for investment advisers to comply with the new registration requirements set forth in The Dodd-Frank Wall Street Reform and Consumer Protection Act passed in July 2010. The FBAR deferrals and exemptions described above for officers and employees of registered investment advisers are not available for FBAR filings covering years in which the investment adviser was unregistered. A separate Foley Adviser will provide additional detail about today's SEC announcement.

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