

February 2012 / Special Alert

A legal update from Dechert's Financial Services and International and Domestic Tax Groups

Extension of FBAR Filing Deadline for Certain Officers and Employees with Signature or Other Authority

All U.S. persons that have a financial interest in, or "signature or other authority over,"¹ a bank, securities or other financial account in a foreign country must report such relationship on the Report of Foreign Bank and Financial Accounts ("FBAR") by June 30 of the following calendar year. On February 14, 2012, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") extended until **June 30, 2013** the deadline to file the initial FBAR for employees and officers of: (i) certain exempted entities (described below) that have signature or authority over, but no financial interest in, one or more foreign financial accounts; and (ii) investment advisers registered with the Securities and Exchange Commission ("SEC") who have signature or authority over, but no financial interest in, certain foreign financial accounts.² FinCEN previously had extended the filing deadline to June 30, 2012 for these individuals, but indicated that additional time was needed to address questions and concerns about FBAR obligations for such persons.

Officers and Employees of Exempted Entities

Under amended FBAR rules published in 2011, officers or employees of certain entities are exempted from reporting that such individuals

have signature or other authority over accounts owned or maintained by the entity.³ These exceptions include:

- An officer of a bank that is examined by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision, or the National Credit Union Association need not report that he or she has signature or other authority over a foreign financial account owned or maintained by the bank, if the officer or employee has no financial interest in the account.
- An officer or employee of a "financial institution"⁴ that is registered or examined by a federal banking regulator, the SEC or the Commodity Futures Trading Commission need not report that he or she has signature or other authority over a foreign financial account owned or maintained by the financial institution, if the officer or employee has no financial interest in the account.

¹ "Signature or other authority" means the authority of an individual (alone or in conjunction with others) to control the disposition of money, funds, or other assets held in a financial account by direct communication (whether in writing or otherwise) to the person that maintains the financial account. 31 C.F.R. § 1010.350(f)(1).

² FinCEN Notice 2012-1 (Feb. 14, 2012) (hereinafter the "Notice").

³ FinCEN, Amendment to the Bank Secrecy Act Regulations – Reports of Foreign Financial Accounts, 76 Fed. Reg. 10234 (Feb. 24, 2011). For additional information, please refer to "Recent Changes to FBAR Reporting Obligations," available at http://www.dechert.com/Recent_Changes_to_FBAR_Reporting_Obligations_03-07-2011/.

⁴ For purposes of this exception, a "financial institution" is a defined term under the Bank Secrecy Act ("BSA") implementing regulations. See 31 C.F.R. § 1010.100(t). Importantly, the definition of "financial institution" in the BSA regulations includes broker-dealers and mutual funds, but does not include registered investment advisers.

- An officer or employee of an “Authorized Service Provider”⁵ to a registered investment company need not report that he or she has signature or other authority over a foreign financial account owned or maintained by the investment company, if the officer or employee has no financial interest in the account.
- An officer or employee of an entity whose equity securities are registered with the SEC or listed on any United States national securities exchange need not report that he or she has signature or other authority over a foreign financial account of such entity, if the officer or employee has no financial interest in the account.
- An officer or employee of an entity that has a class of equity securities registered (or American depository receipts in respect of equity securities registered) under Section 12(g) of the Securities Exchange Act of 1934 need not report that he or she has signature or other authority over a foreign financial account of such entity, if the officer or employee has no financial interest in the account.

The Notice extends the FBAR filing deadline to June 30, 2013 for:

- An employee or officer of an entity listed in the exceptions above (a “Covered Entity”) who has signature or other authority over, and no financial interest in, a foreign account of a “controlled person” of the Covered Entity; and
- An employee or officer of a controlled person of a Covered Entity who has signature or other authority over, and no financial interest in, a foreign account of the Covered Entity, the controlled person or another controlled person of the Covered Entity.

For purposes of the Notice, a “controlled person” is a United States or foreign entity that is more than 50% owned (directly or indirectly) by a Covered Entity (e.g., a wholly-owned subsidiary).

⁵ “Authorized Service Provider” means an entity that is registered with and examined by the SEC and provides services to an investment company registered under the Investment Company Act of 1940 (the “1940 Act”). 31 C.F.R. § 1010.350(f)(2)(iii).

Officers and Employees of Investment Advisers

Because the Authorized Service Provider exemption noted above applies only to officers and employees of investment advisers registered with the SEC that provide services to registered investment companies, industry participants expressed concern that the exemption was unnecessarily narrow. In response to these concerns, FinCEN extended the FBAR filing deadline for officers and employees of investment advisers registered with the SEC and who have signature or other authority over and no financial interest in foreign financial accounts of persons that are not investment companies registered under the 1940 Act.⁶ The Notice extends the FBAR filing deadline to June 30, 2013 for such individuals.

Dechert will continue to monitor developments in this area and will issue future *DechertOnPoints* as developments warrant.



This update was authored by Thomas C. Bogle (+1 202 261 3360; thomas.bogle@dechert.com), Adrienne M. Baker (+1 617 728 7151; adrienne.baker@dechert.com), Michael Hirschfeld (+1 212 698 3635; michael.hirschfeld@dechert.com) and Jeanette Wingler (+1 202 261 3363; jeanette.wingler@dechert.com).

⁶ For example, employees of an SEC-registered investment adviser with signature or other authority over, but no financial interest in, a foreign financial account of a privately offered fund or a separate account would be covered by the Notice.

Practice group contacts

For more information, please contact the authors, one of the attorneys listed or any Dechert attorney with whom you regularly work. Visit us at www.dechert.com/financial_services and <http://www.dechert.com/tax>.

Karen L. Anderberg

London
+44 20 7184 7313
karen.anderberg@dechert.com

David L. Ansell

Washington, D.C.
+1 202 261 3433
david.ansell@dechert.com

Adrienne M. Baker

Boston
+1 617 728 7151
adrienne.baker@dechert.com

Margaret A. Bancroft

New York
+1 212 698 3590
margaret.bancroft@dechert.com

Sander M. Bieber

Washington, D.C.
+1 202 261 3308
sander.bieber@dechert.com

Stephen H. Bier

New York
+1 212 698 3889
stephen.bier@dechert.com

Thomas C. Bogle

Washington, D.C.
+1 202 261 3360
thomas.bogle@dechert.com

Julien Bourgeois

Washington, D.C.
+1 202 261 3451
julien.bourgeois@dechert.com

Kevin F. Cahill

Orange County
+1 949 442 6051
kevin.cahill@dechert.com

Christopher D. Christian

Boston
+1 617 728 7173
christopher.christian@dechert.com

Elliott R. Curzon

Washington, D.C.
+1 202 261 3341
elliott.curzon@dechert.com

Douglas P. Dick

Washington, D.C.
+1 202 261 3305
douglas.dick@dechert.com

Daniel M. Dunn

New York
+1 212 698 3857
daniel.dunn@dechert.com

Karl J. Paulson Egbert

Hong Kong
+1 852 3518 4738
karl.egbert@dechert.com

Joseph R. Fleming

Boston
+1 617 728 7161
joseph.fleming@dechert.com

Brendan C. Fox

Washington, D.C.
+1 202 261 3381
brendan.fox@dechert.com

Allison Harlow Fumai

New York
+1 212 698 3526
allison.fumai@dechert.com

David M. Geffen

Boston
+1 617 728 7112
david.geffen@dechert.com

Frederick J. Gerhart

Philadelphia
+1 215 994 2838
frederick.gerhart@dechert.com

David J. Harris

Washington, D.C.
+1 202 261 3385
david.harris@dechert.com

Christopher P. Harvey

Boston
+1 617 728 7167
christopher.harvey@dechert.com

Robert W. Helm

Washington, D.C.
+1 202 261 3356
robert.helm@dechert.com

Michael Hirschfeld

New York
+1 212 698 3635
michael.hirschfeld@dechert.com

Richard Horowitz

New York
+1 212 698 3525
richard.horowitz@dechert.com

Megan C. Johnson

Washington, D.C.
+1 202 261 3351
megan.johnson@dechert.com

Jane A. Kanter

Washington, D.C.
+1 202 261 3302
jane.kanter@dechert.com

Geoffrey R.T. Kenyon

Boston
+1 617 728 7126
geoffrey.kenyon@dechert.com

Matthew Kerfoot

New York
+1 212 641 5694
matthew.kerfoot@dechert.com

Steven P. Kirberger

New York
+1 212 698 3698
steven.kirberger@dechert.com

Robert H. Ledig

Washington, D.C.
+1 202 261 3454
robert.ledig@dechert.com

Edward P. Lemanowicz

Philadelphia
+1 215 994 2492
edward.lemanowicz@dechert.com

George J. Mazin

New York
+1 212 698 3570
george.mazin@dechert.com

Joshua Milgrim

New York
+1 212 641 5659
joshua.milgrim@dechert.com

Gordon L. Miller

Washington, D.C.
+1 202 261 3467
gordon.miller@dechert.com

Jack W. Murphy

Washington, D.C.
+1 202 261 3303
jack.murphy@dechert.com

James H. Nix

New York
+1 212 698 3595
james.nix@dechert.com

John V. O'Hanlon

Boston
+1 617 728 7111
john.ohanlon@dechert.com

Reza Pishva

Los Angeles
+1 213 808 5736
reza.pishva@dechert.com

Edward L. Pittman

Washington, D.C.
+1 202 261 3387
edward.pittman@dechert.com

Jeffrey S. Puretz

Washington, D.C.
+1 202 261 3358
jeffrey.puretz@dechert.com

Jon S. Rand

New York
+1 212 698 3634
jon.rand@dechert.com

Robert A. Robertson

Orange County
+1 949 442 6037
robert.robertson@dechert.com

Keith T. Robinson

Washington, D.C.
+1 202 261 3438
keith.robinson@dechert.com

Michael J. Rufkahr

Washington, D.C.
+1 202 261 3437
michael.rufkahr@dechert.com

Kevin P. Scanlan

New York
+1 212 649 8716
kevin.scanlan@dechert.com

Jeremy I. Senderowicz

New York
+1 212 641 5669
jeremy.senderowicz@dechert.com

Frederick H. Sherley

Charlotte
+1 704 339 3100
frederick.sherley@dechert.com

Michael L. Sherman

Washington, D.C.
+1 202 261 3449
michael.sherman@dechert.com

Stuart Strauss

New York
+1 212 698 3529
stuart.strauss@dechert.com

Patrick W. D. Turley

Washington, D.C.
+1 202 261 3364
patrick.turley@dechert.com

Thomas P. Vartanian

Washington, D.C.
+1 202 261 3439
thomas.vartanian@dechert.com

M. Holland West

New York
+1 212 698 3527
holland.west@dechert.com

Richard P. Wild

Philadelphia
+1 215 994 2670
richard.wild@dechert.com

Jennifer Wood

London
+44 20 7184 7403
jennifer.wood@dechert.com

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