Client Alert

pillsbury

Investment Funds
& Investment Management

June 24, 2009

Revised TD F 90-22.1: Report of Foreign Bank and Financial Accounts

NOTE: Information in this Alert is now superseded. Please see "2008 and Prior Years' FBAR Filing Deadlines Extended for Certain Persons to June 30, 2010."

An obligation to file a Report of Foreign Bank and Financial Accounts ("FBAR") currently applies to any United States person who has a financial interest in or signature or other authority over any financial accounts in a foreign country, if the aggregate value of these financial accounts exceeds $10,000 at any time during the calendar year. The filing deadline is June 30, 2009.

The IRS has revised the FBAR Form applicable to foreign financial accounts held during 2008. The revisions have expanded the definitions of "United States person," "financial account," "financial interest" and "signature or other authority."

The IRS has not issued any clear guidance whether a U.S. person who has a financial interest in or signature or other authority over a foreign private investment fund (hedge fund and private equity fund) is subject to FBAR filing obligations. Some IRS personnel have provided an interpretation that extends the obligation more broadly than the IRS' previous position suggested. In light of the steep penalties ($10,000 for non-willful violations and $100,000 and up plus criminal penalties for willful violations), we recommend the following U.S. persons make a precautionary FBAR filing:

- Any U.S. "feeder" fund invested in a foreign "master" fund;
- Any U.S. investment manager/general partner with an interest (including profits interest) in an offshore "mini-master" structure;
- Any U.S. investment manager/general partner that is the sole shareholder of a foreign master fund's general partner entity (if the master fund is a partnership entity);

- Any U.S. person who has signature or other authority over a foreign investment fund, including the principals and/or CFO/COO of an investment manager who have signature authority over an offshore bank or brokerage account or authority to instruct an administrator to move money in an offshore account;
- U.S. shareholders of a foreign fund (investment managers of offshore funds should consider advising U.S. investors that are shareholders in their offshore fund that they may have an FBAR obligation).

For further information, please contact Pillsbury's Investment Funds & Investment Management team:

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