



Alert

Employee Benefits & Executive Compensation
Client Service Group

To: Our Clients and Friends

April 12, 2011

Pension Plan Reporting of Foreign Bank and Financial Accounts

Representatives of pension plans with interests in foreign financial accounts may be required to report those accounts to the Internal Revenue Service each year.

Background

On February 24, 2011, the United States Treasury Department issued final regulations that greatly expand the reporting requirements for individuals and entities that hold interests in foreign accounts. The Report of Foreign Bank and Financial Accounts ("FBAR") regulations generally require any United States person (including a trust) who has either a "financial interest" in or "signature or other authority" over any foreign "bank, securities, or other financial account" with a value of more than \$10,000 [at any time] during a calendar year to file a FBAR report by June 30 of the following calendar year.

Accounts Subject to FBAR Reporting

The FBAR reporting requirements generally apply to all bank, securities, and similar financial accounts held outside the United States. The types of accounts generally subject to FBAR reporting include:

- securities accounts,
- bank accounts,
- insurance and annuity accounts with cash value,
- depository accounts with a financial agency,
- commodity futures and option accounts, and
- mutual fund or pooled accounts available to the general public.

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Some foreign investments typically held by pension plans are exempt from these reporting requirements, such as foreign-sited hedge funds in which the general public cannot invest and accounts sited in the United States that hold foreign securities.

Entities Subject to FBAR Reporting

Entities or individuals who either hold a “financial interest” in or have “signatory or other authority” over reportable accounts are subject to FBAR reporting requirements. Generally, a pension trust holds legal title to a reportable account and, as a result, will likely have a financial interest in the account for this purpose and be subject to the FBAR reporting requirement.

Even though the plan sponsor may have no financial interest in a reportable account, it could be subject to FBAR reporting requirements if it has signatory or other authority over the account. Signatory or other authority includes for this purpose the authority to direct the disposition of account funds *through direct communication* with the person or entity with whom the account is maintained. The ability to direct disposition of account funds indirectly does not constitute signatory authority for this purpose; for example, if the plan sponsor has indirect authority to direct disposition of account funds by instructions to the plan trustee and the plan trustee has the authority to direct disposition through direct communication with the person or entity with whom the account is maintained, the plan trustee, not the plan sponsor, has signatory authority for this purpose.

If you have any questions regarding anything discussed in this Alert, the attorneys and other professionals of the Employee Benefits and Executive Compensation group of Bryan Cave LLP are available to answer your questions.

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