

June 3, 2011

FinCEN Extends FBAR Filing Deadline for Certain Officers and Employees – Does This Portend Changes?

On May 31, 2011, in FinCEN Notice 2011-1, the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) extended the 2010 Report of Foreign Bank and Financial Accounts (FBAR) filing deadline from June 30, 2011, to June 30, 2012, for certain officers and employees with signature authority but no financial interest in a foreign financial account. The officers and employees eligible for the extended effective date generally are persons that may have qualified for an exception to individual FBAR filing under the FBAR rules in effect prior to the finalization of the regulations in February of this year, but that do not qualify for an exception under the regulations as finalized and therefore are required to file individual FBARs reporting their signature authority. The Notice also appears to provide relief to officers and employees of U.S. subsidiaries of foreign corporations the stock of which is listed on a U.S. exchange. Those persons generally were not eligible for an exemption even before the regulations were finalized. Click [here](#) for a copy of Sutherland's March 4 Legal Alert.

The Notice is in response to questions received by FinCEN regarding the application of the exceptions to the covered individuals. Significantly, the Notice may be an indication of further amendments to the regulations that potentially would expand the consolidated FBAR rules. Prior Notices (Notices 2009-62 and 2010-23) that suspended FBAR filings for similar individuals were followed by a change in the FBAR regulations.

The FBAR reporting was extended for officers or employees of either an entity listed below or a controlled person of that entity whose signature authority was over either a foreign controlled subsidiary or an entity other than the individual's employer. The officer or employee must be an officer or an employee of one of the following entities.

- i. Banks that are examined by certain specified Federal offices or agencies;
- ii. Financial institutions registered with and examined by the Securities and Exchange Commission (SEC) or the Commodity Future Trading Commission;
- iii. Entities that are registered with and examined by the SEC that provide services to an investment company registered under the Investment Company Act of 1940;
- iv. Entities with a class of equity securities registered (or American depository receipts with respect to equity securities registered) under § 12(g) of the Securities Exchange Act of 1934; and
- v. Entities with a class of equity securities listed (or American depository receipts listed) on any United States national securities exchange, and U.S. subsidiaries of U.S. entities with a class of listed securities if the U.S. subsidiary is identified on a consolidated FBAR filed by the parent.



If you have any questions about this Legal Alert, please feel free to contact any of the attorneys listed below or the Sutherland attorney with whom you regularly work.

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