

Client Alert.

June 13, 2012

2011 Report of Foreign Bank and Financial Accounts (“FBAR”) Due June 30

By Edward L. Froelich, Thomas A. Humphreys, and Bernie J. Pistillo

We wanted to remind our clients that Treasury Form TD F-90 22.1 “Report of Foreign Bank and Financial Accounts” (commonly known as the “FBAR”) is due on June 30, 2012 with respect to the calendar year 2011. All U.S. persons who had a financial interest in or signature authority over foreign financial accounts must file the FBAR if the aggregate value of the foreign financial accounts exceeded \$10,000 at any time during 2011. A U.S. person includes citizens and residents and domestic entities generally. The FBAR form and instructions can be accessed here: <http://www.irs.gov/pub/irs-pdf/f90221.pdf>. Failure to file the FBAR can result in civil and criminal penalties, depending upon the nature of the failure. Please note that the obligation to file this form is separate and independent from the obligation to file Form 8938 with one’s income tax return (new for returns due in 2012). The two forms cover different accounts and assets, and filing of one does not discharge the obligation to file the other. The IRS has prepared a helpful summary of these differences which can be viewed here: <http://www.irs.gov/businesses/article/0,,id=255986,00.html>.

The FBAR should be filed so that it is *received* by the IRS on June 30, 2012. The instructions provide two addresses, one for regular mail and one for overnight delivery. We recommend sending the form by either certified mail or tracked overnight mail in order to obtain proof of delivery.

In general, the definitions and instructions for filing the FBAR are relatively straightforward. However, our clients, including individuals, corporations and other entities, have encountered gray areas in the interpretation of the FBAR rules, and we have regularly counseled them as to the appropriate action they should take. We have also approached the agencies responsible for the administration of the FBAR – the IRS and the Financial Crimes Enforcement Network (or FinCEN) – to confirm our understanding of the application of the FBAR rules. Should you have any questions regarding your FBAR filing obligations, we will be happy to assist you.

Contact:

Edward L. Froelich
(202) 778-1646
efroelich@mofo.com

Thomas A. Humphreys
(212) 468-8006
thumphreys@mofo.com

Bernie J. Pistillo
(415) 268-7041
bpistillo@mofo.com

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