

EXTENSION OF FBAR FILING DEADLINE FOR CERTAIN OFFSHORE INVESTMENTS

June 24, 2009

Informal comments by representatives of the IRS suggested for the first time on June 12, 2009 that investments in certain types of foreign hedge funds may constitute foreign financial accounts, for which a U.S. investor must file a Report of Foreign Bank and Financial Accounts (an “**FBAR**”).¹ The IRS has not provided any written statement to that effect, however, or any guidance as to which types of funds would constitute foreign financial accounts for which filing is required.

The IRS announced today that the following persons have additional time to file FBARs if they have recently learned of their filing obligations and have insufficient time to gather the necessary information to complete the FBARs by the June 30, 2009 FBAR filing deadline:

- (i) any taxpayer that reported and paid tax on all of its 2008 taxable income; and
- (ii) any U.S. person that has an obligation to file an FBAR for a foreign financial account if all of the 2008 taxable income with respect to that account is timely reported.

A person taking this approach must file the FBAR by September 23, 2009, attach a statement explaining why the FBAR is filed late, and satisfy certain additional filing requirements. The IRS stated that, in this situation, it will not impose a penalty for the failure to file the FBAR.²

There is considerable confusion over whether investments in foreign hedge funds or private equity funds are subject to the FBAR filing requirements. We intend to urge the Treasury Department and IRS to provide further guidance on this subject.

If you have questions about the contents of this memorandum or the FBAR filing requirements, please call your Davis Polk contact.

¹ See ABA Section of International Law, Committee on International Taxation, *Foreign Bank Account Reports: Getting It Straight Before the June 30 Deadline* (teleconference, June 12, 2009).

² The IRS announcement appeared in FAQ #43 posted on the IRS website today at http://www.irs.gov/pub/irs-utl/faqs-revised_6_24.pdf.