U.S. DEPARTMENT OF TREASURY MANDATES E-FILING OF FBAR

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Any Report of Foreign Bank and Financial Accounts (IRS Form TD F 90-22.1), the so-called "FBAR," filed on or after July 1, 2013, must be submitted electronically. Any U.S. citizen or U.S. resident with more than $10,000 U.S. dollars in one or more non-U.S. bank or financial accounts (in the aggregate) at any time during a year must file an FBAR for that year with the U.S. Department of Treasury by June 30 of the following year; the U.S. Department of Treasury does not allow an extension of this deadline. The FBAR requires disclosure of information regarding the non-U.S. bank and financial accounts, including the highest value in each account at any time during the year. Prior to July 1, 2013, filers could submit the FBAR in paper form by mailing it to the U.S. Department of Treasury.

The Financial Crimes Enforcement Network (FinCEN), the bureau of the U.S. Department of Treasury responsible for enforcing the FBAR filing requirement, adopted a rule that mandates electronic submission of any FBAR filed on or after July 1, 2013, including delinquent FBARs filed for prior years. Any paper FBAR filed on or after July 1, 2013, will not be accepted; the U.S. Department of Treasury will return the paper FBAR to the filer and not consider the FBAR as filed until it is electronically submitted. A filer who is unable to submit an FBAR electronically may contact the FinCEN Regulatory Helpline at 800-949-2732 to request an exemption from e-filing.

The e-filing mandate for FBARs will make it easier for FinCEN to detect the filing of delinquent FBARs. As a result, it is now more likely than it was previously that delinquent FBARs not filed in connection with a submission under the Internal Revenue Service's (the IRS's) Offshore Voluntary Disclosure Program or streamlined filing compliance procedure for nonresident non-filers will be referred by FinCEN to the IRS for enhanced scrutiny or audit; the IRS may then impose penalties for the late filing of the FBARs. This is yet another way in which the U.S. Department of Treasury is trying to increase compliance with the FBAR filing requirement and combat offshore tax evasion, and it raises the risk of detection and potential examination of delinquent FBARs submitted outside of one of the abovementioned IRS programs.