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December 21, 2011

Dear Client:

Foreign reporting is a notoriously difficult area to understand and keep up to date on compliance matters. In recent years, the IRS has become increasingly concerned with foreign accounts and holdings. As a result, we are providing the following information in order to assist you in navigating this aspect of your federal reporting requirements.

Each U.S. person who has a financial interest in, or signature or other authority over foreign bank accounts or other financial accounts must file Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts or FBAR) for each calendar year during which the total value of the accounts exceeds \$10,000. This is true even if the account has not earned any income during the year. Financial accounts include: securities, brokerage, savings, demand, checking, deposit, time deposit, or other accounts maintained with a financial institution. A financial account also includes a commodity futures or options account, an insurance policy with a cash value (such as a whole life insurance policy), an annuity policy with a cash value, and shares in a mutual fund or similar pooled fund.

The FBAR form is due by June 30 following the year for which it applies (i.e. a report for 2011 is due June 30, 2012). The penalties for failure to file an FBAR are onerous. The civil penalties for a non-willful violation can be up to \$10,000 per violation. Civil penalties for a willful violation may not exceed the greater of \$100,000 or 50% of the amount in the account at the time of the violation. The criminal penalty for willful violations is a fine up to \$250,000 or imprisonment for not more than five years, or both.

The FBAR has previously been required solely for an account with a financial interest. However, the IRS has expanded the filing requirement to report other financial assets. After March 18, 2010, all individuals who hold an interest in a specified foreign financial asset will be required to attach required information for each individual foreign financial asset if the total value of all the individual's foreign financial assets exceeds \$50,000 at the end of the year or more than \$100,000 any time during the year. For married filing joint returns the thresholds adjust to foreign financial assets exceeding \$100,000 at the end of the year or more than \$200,000 any time during the year.

Specified foreign financial assets include financial accounts maintained by foreign financial institutions and other assets not held in accounts maintained by financial institutions. They include, but are not limited to, stock or securities issued by non-U.S. persons, financial instruments or contracts with issuers or counterparties that are non-U.S. persons, and interests in certain foreign entities. Some examples include: interest in foreign trust or foreign estate; stock issued by foreign corporations; a capital or profit interest in a foreign partnership; a note, bond, debenture or other form of indebtedness issued by a foreign person; interest rate swap, currency swap, basis swap, interest rate cap, interest rate floor, commodity swap, equity swap; option or other derivative instrument with respect to any example given or with respect to any currency or commodity entered into with a foreign counterpart. However, no disclosure is required for interests that are held in a custodial account with a U.S. financial institution.

The IRS has announced that the annual reports will be filed on Form 8938, which will have to be attached to the individual's income tax return for the tax year. However, individuals who have to file an income tax return for a tax year before IRS releases Form 8938 may file their returns without attaching the form. However, Form 8938 for the suspended years will have to be attached to the individual's next income tax

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return that has to be filed with IRS. The filing does not show any income. Income from any foreign source still is required to be reported on Form 1040. Filing Form 8938 does not relieve a taxpayer of the requirement to file the FBAR (Form TD F 90-22.1), if you are otherwise required to file.

The penalty for failing to report specified foreign financial assets for a tax year is \$10,000. However, if this failure continues for more than 90 days after the day on which the IRS mails notice of the failure to the individual, additional penalties of \$10,000 for each 30-day period (or fraction of the 30-day period) during which the failure continues after the expiration of the 90-day period apply, with a maximum penalty of \$50,000.

If you want to file, or are uncertain whether you are, or will be, required to file, an FBAR or a Form 8938 for the current year or for a past year, please contact us to discuss your situation and the best way to proceed.

Sincerely,

*R&A CPAs*