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IRS Extends Filing Deadlines for Investors in Foreign Funds and Persons with Signature Authority but no Financial Interest in Foreign Accounts

On August 7, 2009, the IRS issued Notice 2009-62 which extends the deadlines for certain filers of the Report of Foreign Bank and Financial Accounts, Form TD F 90-22.1. This Notice will provide welcome (and much needed) relief to investors in foreign hedge funds, private equity funds and mutual funds, as well as persons having signature authority but no financial interests in certain foreign accounts (i.e., holders of powers of attorney and holders of limited powers of appointment).

Many investors in commingled foreign accounts first became aware of the possible need for filing the FBAR forms following comments by certain IRS officials on June 12, 2009. Because of the confusion created by these comments, on June 24, 2009, the IRS issued guidance in question and answer format delaying the need for filing the 2008 (and prior) FBAR forms for commingled accounts until September 23, 2009. Notice 2009-62 goes much further, by providing that FBAR forms (for 2008 and all prior years) for commingled foreign accounts and for accounts over which a person has signature authority but no financial interest will not be due before June 30, 2010, the filing deadline for the 2009 FBAR forms.

Further, the IRS invited comments on when FBARs should be required for both commingled accounts and accounts over which a person has signature authority but no

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financial interest. This raises the possibility (indeed, the likelihood) that revised FBAR reporting rules may exempt many classes of owners of commingled accounts as well as persons having signature authority but no financial interest in a foreign account.

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