Filing Requirements Potentially Applicable to Investors in Foreign Hedge and Other Alternative Investment Funds

June 25, 2009

Deadline to File Report of Foreign Bank and Financial Accounts Is June 30th

Each United States person who has a financial interest in, or signature or other authority over, any foreign "financial accounts" (discussed below) generally must file a report for each calendar year on Form TD F 90-22.1,[1] Report of Foreign Bank and Financial Accounts, on or before June 30th of the succeeding calendar year, if the aggregate value of such financial accounts exceeds $10,000 at any time during such calendar year. The return for calendar year 2008 is due on or before Tuesday, June 30, 2009.

We understand that many private investment fund managers and investors historically have taken the position that foreign hedge and other alternative investment funds should not be subject to the filing requirement. It has recently been reported, however, that certain representatives of the Internal Revenue Service (the "Service") appear to believe such funds are financial accounts subject to the filing requirement. In a letter dated June 19, 2009 to the Honorable Douglas H. Shulman, Commissioner of the Service, the Managed Funds Association ("MFA") identified widespread confusion among the private equity fund industry and professional service providers to the industry. The MFA also requested the Service to clarify that, until further guidance is issued, a private investment fund organized outside the United States as a foreign partnership or foreign corporation will not be treated as a "financial account." No such clarification has been communicated as of June 23, 2009.

Uncertain Scope of Reporting Obligation

The instructions for Form TD F 90-22.1, as updated in October 2008, would have expanded the scope of the term "United States person," subject to the annual reporting obligation beyond citizens and residents of the United States and domestic partnerships, corporations, estates, and trusts. Any other person "in and doing business in the United States" also would have been treated as a "United States person" subject to the reporting obligation. The instructions provide no guidance as to the meaning of the phrase "in and doing business in the United States." Fortunately, at least with respect to reports due on June 30, 2009, the

100 YEARS
Dewey & LeBoeuf
1909 – 2009

[1] Form TD F 90-22.1, available at http://www.irs.gov/pub/irs-pdf/f90221.pdf.

This memorandum is intended only as a general discussion of these issues. It is not considered to be legal advice. We would be pleased to provide additional details or advice about specific situations. For additional information on this important topic, please feel free to call upon your Dewey & LeBoeuf relationship partner.

Pursuant to US Treasury Department Circular 230, unless we expressly state otherwise, any tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties or (ii) promoting, marketing or recommending to another party any matter(s) addressed herein.

For further information on Dewey & LeBoeuf, please visit www.dl.com

Service, in Announcement 2009-51[2] released earlier this month, temporarily suspended the reporting requirement as applied to persons who are not United States citizens or residents or domestic entities.

The Service, however, did not clarify the meaning of the term "financial accounts," despite requests to do so. The instructions define "financial accounts" to include "any bank, securities, securities derivatives or other financial instruments accounts" and indicate that financial accounts "generally also encompass any accounts in which the assets are held in a commingled fund, and the account owner holds an equity interest in the fund (including mutual funds)." A risk exists, without clarification to the contrary, that financial accounts may include foreign hedge and other alternative investment funds. As indicated above, certain representatives of the Service have indicated that foreign hedge funds should be treated as financial accounts. If they were correct, any United States person (including United States feeder funds) who has invested in a foreign hedge fund (and presumably any other foreign alternative investment fund) generally would be subject to the reporting obligations under Form TD F 90-22.1.

Consider Filing Form TD F 90-22.1 on a Protective Basis Absent Clarifying Guidance

The Service plans to provide additional guidance for reports due after this June 30th. Given the uncertain scope of the current reporting obligations, United States persons may want to consult with their tax advisors regarding the desirability of filing a protective TD F 90-22.1 for any foreign private investment fund in which they have a financial interest or over which they have signature or other authority.

For more information, please contact Todd McArthur at + 1 202 346 7830 or tmcarthur@dl.com, Hershel Wein at +1 212 259 6165 or hwein@dl.com, any other member of the Dewey & LeBoeuf Tax Team, or your Dewey & LeBoeuf relationship attorney.

[2] Announcement 2009-51, available at http://www.irs.gov/pub/irs-drop/a-09-51.pdf.