



*Invested in America*

| asset management group

August 29, 2011

Mr. Jamal El-Hindi  
Associate Director of Regulatory Policy and Programs  
Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, VA. 22183

Re: FinCEN Final Rule on FBAR Responsibilities

Dear Mr. El-Hindi:

The Asset Management Group (the “AMG”)<sup>1</sup> of the Securities Industry and Financial Markets Association (“SIFMA”) appreciates the opportunity to provide FinCEN with comments regarding new final regulations (the “**Final Regulations**”) implementing the requirements of the Report of Foreign Bank and Financial Accounts (“**FBAR**”), used by US persons to annually report to the US Department of the Treasury their financial interest in, or signature authority over, foreign financial accounts.

Among the requirements set forth in the Final Regulations is a requirement that an employee who has signatory authority over a foreign account of either (1) a non-US company, or (2) a US company of which the employee is neither an employee nor an officer, comply with the FBAR reporting rules. While there are certain exceptions from this requirement, the guidance contained in the release clearly states that these exceptions would not apply to SEC registered investment advisers when they are providing advisory services to clients that are not registered investment companies.

As described in more detail below, we respectfully request that:

- (i) Employees of AMG member firms and its subsidiaries, affiliates, service providers, and agents are exempted from the requirement to file individual FBAR reports relating to any authority that they have to instruct foreign banks and custodians on behalf of clients and FinCEN should allow AMG member firms to submit a consolidated form.
- (ii) Modifications are made to reporting responsibilities of former employees.
- (iii) Privacy requirements in investment contracts are respected.
- (iv) FinCEN provides greater clarity on filing requirements.

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<sup>1</sup> The AMG’s members represent U.S. asset management firms whose combined assets under management exceed \$20 trillion. The clients of AMG member firms include, among others, registered investment companies, ERISA plans, and state and local government pension funds, many of whom invest in commodity futures, options, and swaps as part of their respective investment strategies.

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**Persons with signature authority employed by AMG member firms and its subsidiaries, affiliates, service providers, and agents should be exempt from FBAR filings**

As stated in a letter submitted by the AMG on June 17, 2011 (the “**Prior Letter**”), employees with signature authority merely take instructions from higher authority to move assets on behalf of clients. Some of these employees may be directly employed by an AMG member firm, while others may be employed at wholly owned subsidiaries, affiliates, service providers, and agents. These employees do not have autonomy in directing the movement of money and asset managers have robust operational controls in place to ensure that these employees instruct that money be moved in an appropriate manner. Therefore, as further outlined in the Prior Letter, the requirement for these employees to personally report on accounts they have signature authority over in their professional capacity is incredibly onerous and inefficient. As such, we feel that the employees aforementioned should be exempt from personal FBAR filings. Instead, FinCEN and the IRS should consider alternatives that will still satisfy their objectives.

The AMG feels that each member firm should file a single consolidated FBAR report which lists all of the client accounts and each individual that has signature authority over the specific accounts. This would alleviate many concerns AMG members have, allow for a more efficient reporting mechanism, and still provide oversight of foreign accounts.

**Modifications should be made to reporting obligations of former employees**

Former employees that possessed signature authority over client accounts under current requirements would be required to submit FBAR filings for those accounts. As stated in the Prior Letter, AMG member firms have significant concerns with providing these former employees with confidential client information. This information could be subject to misuse in a variety of capacities, including identity theft, fraud, and “shopping” of information to competitors.

In addition to concerns of business risk, there are administrative concerns that finding proper whereabouts of former employees will be incredibly problematic. As these former employees must file FBAR reports for accounts they previously had signature authority over, failure to provide them with necessary documentation could present serious legal consequences.

**Privacy requirements in investment contracts should be respected**

Some AMG member firms manage the assets of foreign clients, such as sovereign wealth funds, who are concerned with privacy issues and the misappropriation of their sensitive account information. When an AMG member has a client who uses an international bank as a custodian, it would have to report confidential client information of these foreign clients on an FBAR report. However, if these clients were to use an advisor outside of the United States, they would not be subject to disclosure of their client information on an FBAR filing. Therefore, these reporting requirements have the potential to place AMG member firms at a competitive disadvantage with non-U.S. domiciled advisors putting AMG firms at a significant risk of losing market share. The AMG requests that the privacy considerations in these investment contracts are respected and less prescriptive reporting on these accounts is permitted.

**There is uncertainty surrounding filing requirements**

Many reputable asset managers have been receiving advice from legal firms in regards to FBAR that, in some instances, differs from advice rendered elsewhere and, in others, diametrically opposite. Therefore, AMG members are confused on the interpretation of this requirement and, as a result, are spending a lot of time and money to comply in good faith. The AMG requests that FinCEN make the requirements for each individual firm explicitly clear - especially in regards to employees with signature authority - before next year's reporting obligation.

**Conclusion**

Based on the foregoing, we respectfully request that Authorized Employees be exempted from the requirement to file individual FBAR reports relating to any authority that they have to instruct foreign banks and custodians on behalf of clients for the 2010 calendar year and all prior years. In addition, FinCEN should allow firms to consolidate the entirety of their accounts and employees with signature authority on one form. Lastly, there should be modifications with the protocol for filing requirements of former employees and the type of information required for non-domestic clients should be less prescriptive.

The AMG appreciates your attention to this matter and welcomes the opportunity to provide foregoing comments and recommendations regarding FBAR reporting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Cameron', with a long horizontal flourish extending to the right.

Timothy W. Cameron, Esq.  
Managing Director, Asset Management Group  
Securities Industry and Financial Markets Association