

Memo

To: Clients and Friends

From: Capital Enhancement LLC

Date: December 19, 2011

Re: Foreign Account Tax Compliance Act (FATCA)

A 2010 law known as FATCA has implemented new foreign reporting requirements in addition to the foreign bank account requirements (FBAR's). We will address these rules below in summary format, and encourage you to call if you wish to discuss how this might apply to you. The IRS announced it will be issuing additional rules shortly.

FATCA requires a new form (8938) that is filed with your tax return. It starts effective with the 2011 return filed next year (with extensions). This form is in addition to the FBAR, meaning some taxpayers will file both FBAR's and Form 8938. Since 8938 is part of your tax return, it carries the same privacy safeguards as your tax return filing.

Form 8938 is required to be filed if your total specified foreign assets exceed either a certain high value or year-end value during the year. If you are single, your high value is \$75,000 and the year-end value is \$50,000. If married, the high value is \$150,000 and the year-end value is \$100,000. Higher thresholds apply for US citizens or green card holders living outside the country.

Specified foreign assets include: foreign bank accounts, foreign securities held outside the US, foreign life insurance cash value, foreign pension plans, direct investments you make in foreign hedge funds, shares in a foreign private company, beneficial ownership in a foreign trust or partnership, and derivatives issued by a foreign institution. They do not include: shares of foreign companies such as ADR's held for you in street name by a US custodian, foreign investments held by a US hedge fund (although the fund may have to disclose these investments to the IRS), or foreign bank accounts at your employer where you have signature authority but no personal ownership of the funds. It is unclear if direct ownership of real estate or gold outside the country is reportable.

The reporting requirements include: name, address, and account number of the institution, description of assets held, value of assets, and income from the assets.

The penalties for not filing start at \$10,000.