

CLARIFICATION:

The following clarification has been offered by David Bernfeld, *Bernfeld, DeMatteo & Bernfeld*.

There have been some questions raised concerning the "Lawsuits against the SEC. Deadline Approaching" posting on the web site. This is intended to clarify and answer those questions.

The Federal Tort Claims Act (the "Act") provides a specific procedure to be followed before a judicial action may be commenced against the United States under the Act.

- (A) A claimant must first file an administrative notice of claim with the agency in question, to allow the agency the necessary time to review the claim and either accept or reject it. Most interested parties previously filed the Notice of Claim by early December 2010, or earlier.
- (B) The Administrative Claim must be filed within two years of the accrual of the claim which for most claimants was two years from the date that Madoff was arrested in December 2008.
- (C) Once the Claim is filed, the agency has a period of 6 months to conduct its review and, as noted, either accept or reject the claim (or do nothing which can be treated by the claimant as a rejection).
- (D) Once the agency rejects the claim, either by a formal writing, or by taking no action for six months after the claim was filed, the claimant may then commence a court case against the agency. As noted, for that purpose, the agency's failure to act for the said six month period satisfies the statute.
- (E) If the rejection was by a formal writing, a claimant receiving such a notice *must* commence the Court action within six months from the rejection and the failure to do so will result in the claim being deemed waived and barred.

*If the rejection is based on agency inaction, rather than a formal written rejection, the 6 month time limit to commence the action will not apply and the normal statute of limitations on bringing actions against the federal government -- six years from the date the claim "accrues" (December 11, 2014) -- will be applicable (at least until such time as the agency sends a formal written rejection notice).*