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2007 DEADLINE FOR DEFERRED COMPENSATION PLAN AMENDMENTS UNDER SECTION 409A FINAL REGULATIONS

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On April 10, 2007 the Department of the Treasury and the Internal Revenue Service issued final regulations on nonqualified deferred compensation under Section 409A of the Internal Revenue Code (the "Final Regulations"). The long awaited Final Regulations are generally effective as of January 1, 2008. Employers have until December 31, 2007 to conform all deferred compensation plans, awards, agreements and other covered arrangements to Section 409A and the Final Regulations. A special effective date rule applies to certain collectively bargained non-qualified deferred compensation arrangements. Plan sponsors may continue to operate their deferred compensation plans in accordance with a reasonable good faith interpretation of the proposed regulations and other interim guidance through December 31, 2007.

Plan sponsors should note that the Final Regulations require document compliance with the Final regulations; operational compliance is no longer enough. Required plan amendments may include changes to deferral election timing and distribution events, as well as to defined terms, such as disability, unforeseeable emergency, change in control, and separation from service. The IRS has made it clear that adoption of a "savings" clause (a provision stating that the plan will be administered in compliance with Section 409A and without regard to non-compliant terms) will not be sufficient to comply with the Final Regulations.

PENALTIES FOR NONCOMPLIANCE

Failure of a plan to comply with 409A in form or in operation will result in tax penalties imposed directly on the individual who is entitled to the deferred compensation. Tax penalties include the immediate taxation of all vested deferred

compensation, an interest penalty based on underpayment of Federal income tax, plus a 20% additional penalty tax on the amount included in income. Plan sponsors have associated tax reporting and withholding obligations on amounts included in income.

Section 409A applies to a broad range of compensation arrangements, including arrangements that traditionally were not considered deferred compensation. Covered arrangements include supplemental executive retirement plans (“SERPs”) and excess plans, 401(k) “wrap” plans, employment agreements, bonus plans, change-in-control agreements, discounted stock options, other equity awards, and may include severance arrangements, taxable retiree welfare benefits and expense reimbursement and fringe benefit arrangements. Exempt arrangements include grandfathered plan benefits (benefits vested and deferred as of December 31, 2004 if the plan is not modified after October 3, 2004), tax-qualified plans, 403(a) and 403(b) plans, 457(b) plans, statutory stock option plans and employee stock purchase plans.

WHAT TO DO NOW?

- Identify all potentially affected plans and arrangements;
- Evaluate each arrangement to determine whether amendment is necessary;
- Review alternatives for compliance;
- Determine actions necessary to amend arrangements by deadline, including whether service provider consent or shareholder approval is required;
- Determine whether SEC reporting of changes is required;
- Amend arrangements as necessary to comply with Section 409A;
- Adopt amendments by December 31, 2007; and
- Communicate changes.

OTHER 2007 DEADLINES:

Reminder - Deferral Elections Deadline: Through December 31, 2007, Section 409A transition rules permit payment elections (date and form) to be changed for amounts not otherwise payable in 2007.



Reminder – Discounted Options Deadline: In most cases, employers have until December 31, 2007 to exchange a discounted stock option, or SAR, subject to Section 409A with a new option, or SAR, that is exempt from Section 409A.

Please contact one of the following members of our Employee Benefits & Executive Compensation Department if you would like further information regarding this Alert.

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