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IMPORTANT REMINDER! Section 409A Deferred Compensation Compliance Deadline Rapidly Approaching

The time to bring ALL deferred compensation arrangements into final compliance with new requirements of federal law is rapidly approaching! Failure to act now could result in the imposition of severe tax penalties. Under the new law (known as “Section 409A” of the Internal Revenue Code), deferred compensation includes a wide variety of arrangements, many of which are not commonly thought to provide deferred compensation. We have listed below some of the arrangements that may be subject to the new requirements. **The final compliance deadline is December 31, 2008.**

We strongly recommend that you promptly contact your advisors concerning this approaching deadline. While Section 409A has been in effect since January 1, 2005, beginning on January 1, 2009, all arrangements that are subject to Section 409A (including verbal agreements) must be in a written document that complies with the requirements of Section 409A.

Not Complying with Section 409A Could Be Expensive

Failure to comply may result in:

- Accelerated taxation of deferred compensation
- Imposition of an additional 20% tax
- Interest and penalties

Many Arrangements Will Require Review and Amendment

The requirements of Section 409A apply to all covered deferred compensation arrangements—not just programs of large or public companies. In addition, Section 409A defines deferred compensation very broadly—encompassing many different (and often unexpected) types of arrangements. As a result, **all** compensation arrangements should be reviewed for compliance with Section 409A. The following is a list of some of the types of arrangements that could be subject to Section 409A, although this list is not exhaustive:

- Employment Agreements
- Stock Options Plans and Grants
- Phantom Equity Plans and Grants
- Traditional Deferred Compensation Plans
- Supplemental Retirement Plans
- Tax Gross-Up Provisions
- Severance Plans and Agreements
- Unwritten Compensation Arrangements
- Indemnity Agreements
- Consulting Agreements
- Other Equity Plans and Grants
- Bonus Plans and Agreements (Annual or Long-Term)
- Transaction Bonus or Change in Control Arrangements
- Reimbursement Arrangements
- Relocation or International Assignment Agreements
- Restricted Equity Plans and Grants
- Split Dollar Arrangements
- Incentive Plans and Arrangements

Do Not Delay

Depending upon many factors, such as the number of deferred compensation arrangements, the complexity of such arrangements, the size of the business and the need for negotiated arrangements and/or board-level approval, **the process of bringing documents into compliance with Section 409A may be a lengthy one.** Important business decisions may need to be made to bring covered programs into compliance, and the process may involve negotiating with executives and employees and obtaining their consent, as well as obtaining board and compensation committee approvals. Rarely is compliance simply a matter of including “boilerplate” language. Also, the decisions made now to bring deferred compensation arrangements into compliance will be difficult, if not impossible, to change after 2008. Therefore, you should allow sufficient time to complete the compliance process.

YOU SHOULD ACT QUICKLY TO DETERMINE WHAT ARRANGEMENTS MAY BE SUBJECT TO SECTION 409A AND WHAT ACTIONS WILL NEED TO BE TAKEN. Failure to meet the deadline could result in harsh tax consequences. **We can help!** Please contact us as soon as possible to begin your Section 409A review and compliance process.

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