

April 11, 2007

## Final Regulations Issued Under Section 409A

The Final Regulations under Section 409A (“Section 409A”) of the Internal Revenue Code of 1986, as amended (“Code”) were issued yesterday. Section 409A significantly revises the rules affecting the design and operation of many types of compensation arrangements and agreements that are now considered to be non-qualified deferred compensation plans.

Over the coming weeks, we will be issuing a series of **Section 409A News Alerts** addressing specific issues covered by the Final Regulations. This first News Alert will address the effective date of the Final Regulations and the requirements regarding amendment of existing plans covered by Section 409A to bring them into compliance with the Final Regulations.

The Final Regulations are applicable for taxable years beginning on or after January 1, 2008. The Final Regulations do not restrict the otherwise applicable transition relief or affect good faith operational reliance on the previously-issued interim guidance until generally January 1, 2008. All plans and arrangements covered by Section 409A must be amended to comply with the Final Regulations by December 31, 2007, but the amendments are required only to bring the documents into compliance for taxable years beginning on and after January 1, 2008. The required plan amendments need not retroactively address all the operational decisions and actions companies have taken or interim amendments which may have been made to comply with Section 409A since Section 409A first became effective on January 1, 2005, so long as such actions or amendments do not affect the plan’s compliance with Section 409A and the Final Regulations for periods on and after January 1, 2008. In addition, companies must be able to demonstrate that plans were operated in compliance with the transition guidance, including demonstrating that amounts were deferred or paid in compliance with the transition rules and interim guidance.

If you have any questions regarding the foregoing, or for assistance in complying with Section 409A, please feel free to contact one of the attorneys listed below.

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