

Executive Compensation and Equity Compensation Plans Year-End Checklist

December 12, 2007

The following checklist describes 2007 year-end action items with respect to executive compensation and equity compensation plans. This list is not exhaustive but is intended to provide a reminder of the general set of issues facing us at year end.

Year-end action items:

- Elections to defer compensation to be earned in 2008 generally must be made by December 31, 2007 under Section 409A of the Internal Revenue Code.
- Elections to change the time or form of payment for existing deferred compensation that is otherwise payable in 2008 must be made by December 31, 2007 under Section 409A transition rules. Note that a payment election in 2007 cannot accelerate a payment into 2007 that is not otherwise due in that year and cannot postpone to a later year a payment otherwise scheduled for 2007.

Elections to change the time or form of payment for deferred compensation that is otherwise payable in 2009 or thereafter can be made until December 31, 2008. The Section 409A transition rules are scheduled to end on December 31, 2008. (For more details, see our LawFlash issued October 24, 2007:

http://www.morganlewis.com/pubs/EB_Section409ADecline_LF_24oct07.pdf.)

- Note that the Section 409A six-month delay required for payment of deferred compensation to a key employee of a public company upon separation from service is currently in effect. The Section 409A transition rules do not postpone the effective date of this requirement.
- Any violations of Section 409A in 2007 must be reported on Form W-2 or Form 1099 for 2007. (For more details, see our LawFlash issued October 26, 2007: http://www.morganlewis.com/pubs/EB_IRSExtendsReporting_LF_26oct07.pdf.)
- Many inadvertent violations of Section 409A occurring in 2007 and minor errors made in 2005 may be corrected to eliminate or minimize Section 409A exposure if required actions are taken by December 31, 2007. Minor errors made in 2006 may be corrected if required actions are

taken by December 31, 2008. (For more details, see our LawFlash issued December 5, 2007: http://www.morganlewis.com/pubs/EB_CorrectionProgram_LF_05dec07.pdf.)

- Compensation committees of public companies should consider the Compensation Discussion and Analysis and other disclosures that will be required in the 2008 proxy statements. The Securities and Exchange Commission is requiring significantly more disclosure about performance targets, compensation analysis, and compensation philosophy in the 2008 proxies. (For more details, see our LawFlash issued October 15, 2007: http://www.morganlewis.com/pubs/BF_ExecCompDiscl_LF_15oct07.pdf.)
- Employers are required to furnish information returns to the Internal Revenue Service (IRS) regarding the exercise of incentive stock options and the transfer of shares acquired under an Employee Stock Purchase Plan that occur on or after January 1, 2007. Unless the IRS decides to postpone the effective date, we anticipate that the deadline for filing the returns will be February 28, 2008. (For more details, see our LawFlash issued December 11, 2007: http://www.morganlewis.com/pubs/EB_NewIncentiveStockOption_LF_11dec07.pdf.)

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