Summer 2011 | *Volume 2, Edition 2*

Perspectives

AN EXECUTIVE COMPENSATION, BENEFITS & HUMAN RESOURCES LAW UPDATE

pillsbury

IN THIS EDITION...

"Cheap Stock" and Section 409A Considerations for Pre-IPO Companies
Private companies that consider going public may not be aware of the overlap between Section 409A of the Internal Revenue Code and cheap stock accounting issues.

Designing Deferred Compensation Plans for Governmental Employers and Tax-Exempt Organizations
The enactment of Section 409A of the Internal Revenue Code in 2004 has changed the rules for designing and drafting deferred compensation arrangements for state and local governments and tax-exempt organizations.

California Adopts Retroactive Conformity to Federal Exclusion from Gross Income for Adult Children Health Benefits
In states that have not conformed, or do not automatically conform, to the Internal Revenue Code changes made by the Patient Protection and Affordable Care Act ("PPACA"), the value of health benefits provided to adult children may be considered income for state income tax purposes unless the child also meets the applicable state definition of a tax dependent.

QUESTIONS FROM OUR READERS...

Q. Can anything be done to avoid Section 409A penalties if it is determined that stock options were erroneously granted at a below fair market value exercise price?

A. A stock option generally may be corrected in the same year in which it was granted (and before it is exercised) by increasing the exercise price to at least the fair market value of the underlying shares as of the date of grant. And, if the optionee is not an "insider" (meaning a director, officer or more than 10% shareholder, as determined under Section 16 of the Securities Exchange Act of 1934, whether or not the employer is a public company), then the option may also be corrected in the year following the year of grant by increasing the exercise price to at least the fair market value of the underlying shares as of the date of grant. This relief is available under Internal Revenue Service Notice 2008-113, and is subject to the conditions set forth in that Notice.

Relief may also be available under proposed Treasury Regulations which describe how to calculate the amount includible in taxable income if there is a violation of Section 409A. These rules may provide an opportunity to avoid income inclusion and taxation under Section 409A by amending the option prior to the year in which it becomes vested.

If it is too late to correct an option, there may also be opportunities to mitigate the adverse tax consequences. Employers are encouraged to consult with counsel promptly upon discovering facts that suggest that options have been granted at a discount.

Upcoming Events...

Employee Benefits in Mergers & Acquisitions
June 9, 2011
American Bar Association, Washington, DC

Worldwide Employee Benefits Network – New York Chapter
June 16, 2011
Alston & Bird LLP, New York, NY

Recent Publications...

Going Global with U.S. Employee Stock Plans

New Rules Proposed for Incentive-Based Compensation at Covered Financial Institutions

Health Care Reform Update: How to Report Health Care Costs on Form W-2

To learn more about these and other recent publications, visit www.pillsburylaw.com/executivecompensation

www.pillsburylaw.com
© 2011 Pillsbury Winthrop Shaw Pittman LLP
All rights reserved.

"Cheap Stock" and Section 409A Considerations for Pre-IPO Companies

by Cindy V. Schlaefer

Private companies that consider going public may not be aware of the overlap between Section 409A of the Internal Revenue Code and cheap stock accounting issues. If a company makes grants of equity awards prior to going public at share prices that are much lower than the initial public offering price, this could lead to accounting charges for the company. But, perhaps more significantly, this could also highlight tax compliance issues under Section 409A.

Accounting Background: Cheap Stock

The proper determination of the fair market value of a company's common stock becomes very important from an accounting perspective when a private company considers going public. Under the accounting rules, the fair value of an equity award on the date of grant must generally be recognized as a compensation charge on the company's financials for purposes of generally accepted accounting principles (GAAP). At the time of an initial public offering (IPO), the Securities and Exchange Commission will review the compensation charges taken for options granted for a period of approximately 12–18 months prior to the IPO. The SEC will apply hindsight in determining the pre-IPO value of the stock, and assume that the value of the stock had increased on a straightline basis from its value 12–18 months earlier through the date of the IPO. If the SEC concludes that a company has undervalued its common stock when granting stock options, the company will likely be required to recognize additional compensation expense for issuing "cheap stock." Should the SEC decide to audit the valuation method used by the company, this could delay the timing of the IPO and could slow down the registration process.

Section 409A Background

Section 409A of the Internal Revenue Code imposes restrictions on deferred compensation arrangements. The law was originally intended to stop abuses in the administration of traditional deferred compensation plans. However, as adopted, the law applies broadly to a wide range of compensation arrangements, from traditional deferred compensation plans to any arrangement deferring the receipt of compensation beyond a short term, subject to limited exceptions. Options granted with an exercise price less than the fair market value of the underlying stock on the date of grant are considered deferred compensation for this purpose, and generally would not comply with the Section 409A restrictions. Penalties for noncompliance include the imposition of income taxes on the optionee when the option vests (even if it is not exercised), including an additional Federal tax equal to 20% of the spread between the exercise price and the fair market value of the underlying stock when the option vests, plus interest, and for California residents, an additional state tax of 20% of the spread, plus interest, for an aggregate marginal rate of over 80%.

Private Company Stock Option Valuations

The Internal Revenue Service has issued guidance for determining the fair market value of private company stock subject to options for purposes of Section 409A. Under the final Section 409A regulations, the fair market value for private company stock may be determined based on the reasonable application of any reasonable valuation method. The regulations provide a list of factors that the Internal Revenue Service would take into account in determining whether a valuation method is reasonable, including the value of the company's tangible and intangible assets, the present value of future cash-flows, the market value of stock of similar entities engaged in substantially similar businesses, recent arm's length transactions involving the sale or transfer of the stock to be valued, and other relevant factors including control premiums or discounts for lack of marketability, provided that all available information material to the value of the company is taken into account. The valuation must be as of a date within the last 12 months, and be updated for any subsequent developments that may materially affect the value of the company.

"Cheap Stock" and Section 409A Considerations for Pre-Ipo Companies (continued)

The final regulations under Section 409A also provide that the following valuation methods will be presumed reasonable if consistently applied:

1. Valuations based on an independent appraisal meeting certain requirements will be presumed reasonable for a period of up to one year. This has emerged as a best practice for private companies.
2. Valuations based on a non-lapse formula (that is, a formula price that would continue to apply to any transferee or subsequent stockholder) which applies generally to transactions in the company's stock may qualify as reasonable. However, as a practical matter, this alternative is typically not applicable to pre-IPO companies.
3. For start-up companies (less than 10 years in business) with illiquid stock, a valuation may be presumed reasonable if made by someone with significant knowledge and experience or training in performing similar valuations, and evidenced by a written report taking into account the factors discussed above. However, this presumption is not available if a public offering is reasonably anticipated within 180 days or a change in control is reasonably anticipated within 90 days.

Reliance on one of these valuation methods shifts the burden of proof to the Internal Revenue Service to demonstrate that the valuation is grossly unreasonable.

Impact of "Cheap Stock" Charges under Section 409A

If the SEC requires the company to restate its financials to increase the compensation charges taken with respect to its stock option grants, the Internal Revenue Service may be more likely to question whether the options were also granted at a discount for tax purposes – even though cheap stock charges may be based on perfect "20-20" hindsight. This creates a risk of additional taxes to the optionees under Section 409A.

Recommendations

Pre-IPO companies seeking to avoid Section 409A issues should consider the following alternatives:

- **Stop making option grants:** Do not make stock option grants during the 12- to 18-month period prior to the initial public offering. More public companies, particularly those with relatively high valuations, have begun granting full value awards such as restricted stock units (or RSUs). These awards are generally not subject to Section 409A (provided that shares are issued as soon as the award becomes vested). However, stock options generally offer more value to an employee if the stock is expected to appreciate significantly, and thus this may not be a desirable alternative for most pre-IPO companies.
- **Obtain independent valuations:** Get an independent valuation and limit option grants to the dates on which the valuation is issued (or updated). Many pre-IPO companies grant options only at quarterly Board meetings and have the independent appraiser update the last annual valuation on a quarterly basis. Companies are also well advised to work with valuation firms with a strong reputation and whose valuations will be respected by the auditors preparing the company's financial statements.
- **Provide ample disclosure:** Limit the SEC's (and potentially the Internal Revenue Service's) inquiries by providing fulsome disclosure in the registration statement which supports the company's valuations and explains any changes in equity value leading up to the initial public offering.

Cindy V. Schlaefer is a partner in the Silicon Valley office. She can be reached at 650.233.4023 or cindy.schlaefer@pillsburylaw.com.

Designing Deferred Compensation Plans for Governmental Employers and Tax-Exempt Organizations

by Mark Jones

The enactment of Section 409A of the Internal Revenue Code (the "Code") in 2004 has changed the rules for designing and drafting deferred compensation arrangements for state and local governments and tax-exempt organizations. Although these arrangements were already subject to regulation under Section 457, only "eligible" deferred compensation arrangements subject to the restrictions of Section 457(b) of the Code are exempt from Section 409A's scope. "Ineligible" arrangements must comply both with the rules under Section 457(f) of the Code and the rules under Section 409A. While this scheme of dual regulation provides hazards for the unwary, it also may provide tax planning opportunities. In particular, the inclusion of an amount into income under Section 457(f) can be structured so that it is treated as a payment for purposes of the short-term deferral exemption, even if the amount continues to be set aside and credited with earnings. In addition, the prospect of stricter regulations under Section 457(f) may make it more advantageous for companies to correct their 457(f) plans now, to the extent that they contain provisions that run afoul of 409A, than after the new guidance is issued.

Congress enacted Section 457 of the Code in 1978 in response to proposed regulations that would have applied assignment of income principles to unfunded deferred compensation. The position of the Internal Revenue Service (the "Service") at the time was that an elective deferral of compensation was tantamount to an anticipatory assignment of income back to the employer, in violation of longstanding judicial doctrine treating the disposal of income as a tax event. Debates about the proper tax treatment of deferred compensation were of particular concern for governmental plans because those plans do not reflect the tension that would otherwise exist between the employer's desire to obtain an immediate deduction and the employee's desire to defer taxation.

As originally enacted, Section 457(b) of the Code permitted government employees to defer taxation on their income until the deferrals are otherwise paid or "made available." This relatively lenient treatment of unfunded deferred compensation was subject to an annual dollar limit[1] and was available only under "eligible" plans that complied with a number of other restrictions. Most notably, elections to defer compensation under an eligible plan were to be made in writing no later than the beginning of the month of the deferral, and distributions were not allowed prior to the participant's severance from employment or age 70½, except on account of an unforeseeable emergency.

Deferrals in excess of the Section 457(b) limit or made under a plan that did not incorporate the restrictions of Section 457(b) were subject to the Service's assignment of income theory. Under Section 457(f) of the Code, these arrangements are taxable at the time of deferral or, if later, in the year in which the amounts are no longer subject to a substantial risk of forfeiture. As Section 457 was initially drafted, therefore, if a government employee received a deferral of income subject to a service requirement, he would generally be permitted to defer taxation until the amount was paid or made available if the deferral did not exceed the applicable dollar limits and the arrangement otherwise complied with Section 457(b). If the plan was subject to Section 457(f), however, the payment would generally become includible in the participant's gross income as he vested into the benefit, even if the amount was not distributed until a later date.

Over time, this elegant solution to a thorny policy dilemma was complicated by numerous amendments. In 1986, legislation was adopted extending Section 457 to deferred compensation arrangements maintained by tax-exempt organizations. Because tax-exempt organizations are not categorically exempt from ERISA's funding rules, however, they can take advantage of Section 457 only if they meet another exemption—generally, by limiting participation to a select group of management or highly compensated employees.

Designing Deferred Compensation Plans for Governmental Employers and Tax-Exempt Organizations (continued)

Section 457 was further amended in 1996, following the bankruptcy of Orange County, California, to require state and local governments to set aside from any assets subject to creditors all deferrals under a Section 457(b) plan and all income, property and rights attributable to those deferrals. This requirement was not extended to tax-exempt organizations, and therefore Section 457(b) plans maintained by tax-exempt entities must remain unfunded. The trust requirement makes available several features under eligible governmental plans that are not available under plans maintained by tax-exempt entities, including participant loans, rollover distributions and trust-to-trust transfers with other eligible retirement plans.[2]

Other amendments have lengthened the list of exclusions to the Section 457 scheme. From its inception, Section 457 has excluded qualified plans under Sections 401(a) and 403(a), nonqualified funded plans under Section 402(b), 403(b) tax-deferred annuities and transfers of property under Section 83. After Section 457 was amended to include tax-exempt plans, the Service issued a notice clarifying that church plans were also to be excluded. And after the Service clarified that Section 457(f) could also apply to nonelective arrangements, the Code was amended to carve out bona fide vacation leave, sick leave, compensatory time, disability pay, death benefit and severance pay plans. The scope of this last amendment – the exclusion of severance pay plans – has proven to be particularly controversial, as discussed below.

Although final regulations were issued under Section 457 in 2003, many of the most difficult issues for employers were not addressed in that guidance. In particular, the Service did not provide any clarification of the meaning of "substantial risk of forfeiture" beyond the statutory definition of "conditioned upon the future performance of substantial services." Thus, it was left open whether participants in a 457(f) plan could elect to subject compensation for which they had already performed services to a substantial risk of forfeiture or extend a substantial risk of forfeiture that already applied. Similarly, the regulations did not clarify what would be considered "substantial" for this purpose. For example, it was not clear whether a post-termination consulting agreement or covenant not to compete was sufficient to defer taxation beyond the date of a participant's severance from employment. Finally, the 2003 regulations did not provide any assistance on the distinction between a Section 457 plan that is payable upon severance from employment and a "severance pay plan" that is exempt from Section 457 entirely.

In the absence of contrary guidance, many practitioners took an aggressive stance on these issues, drafting Section 457(f) plans that permitted deferral elections to be made up to the time that the compensation would otherwise have been paid, allowed participants to accelerate the distribution of their deferrals subject to a reduction in the amount of the benefit paid (known as a "haircut") or extend the risk of forfeiture beyond that date that it would otherwise have lapsed (known as a "rolling risk of forfeiture"), and incorporated provisions, such as consulting agreements and covenants not to compete, that purported to extend the date on which the payments were no longer subject to a risk of forfeiture beyond the date on which they would otherwise vest. In addition, some practitioners argued that any compensation deferred to a participant's severance from employment, even if the amounts were not payable on account of the severance, should be exempt from Section 457 under the "severance pay plan" exemption.

Most reputable practitioners questioned the validity of these practices. In informal guidance, the Service had approved of participant deferral elections under Section 457(f) only where the elections were to be made in advance of the service date, and many representatives of the Service had publicly questioned the validity of rolling risks of forfeiture, which rarely have a legitimate business purpose other than the deferral of taxation. In addition, the phrases at issue had been defined more narrowly in parallel provisions of the law. The phrase "substantial risk of forfeiture" is also used in Section 83 of the Code. Regulations under Section 83 listed covenants not to compete and awards conditioned on the provision of consulting services as examples of risks of forfeiture that are generally not "substantial," except where the particular facts and circumstances indicate otherwise. The phrase "severance pay plan" is also used in regulations under Section 3 of the Employee Retirement Income Security Act ("ERISA"), where they are distinguished from plans providing for a deferral of income if the severance payments are not contingent on the employee's retirement, the amount payable does not exceed twice the employee's annual compensation, and all payments are completed within 24 months after the termination of the employee's services.

Designing Deferred Compensation Plans for Governmental Employers and Tax-Exempt Organizations (continued)

To the extent that there was any ambiguity about the validity of these practices, it was resolved with the enactment of Section 409A of the Code. Section 409A provides that a nonqualified compensation plan must comply with certain restrictions on the timing of deferral elections and the distribution of benefits, or the deferred amounts will become includible in gross income and subject to an additional tax equal to 20% of the deferral when they are no longer subject to a substantial risk of forfeiture. Section 409A excludes eligible deferred compensation plans under Section 457(b) from its scope, but Notice 2005-1, the first piece of formal guidance issued under Section 409A, clarified that ineligible deferred compensation plans maintained by a state or local government or tax-exempt organization are subject to Section 409A in addition to Section 457(f).

On its face, Section 409A included several restrictions that were of direct relevance to the manner in which many 457(f) plans were being administered. For example, it required that any deferral election be made by the end of the taxable year preceding the year in which the participant performs services, a date much earlier than was required under many 457(f) plans. In addition, Section 409A included a prohibition on acceleration of payments without exception for "haircuts" or many of the other practices commonly used to cut off deferral periods under Section 457(f).

However, the stringency of the restrictions under Section 409A was not fully apparent until final regulations were issued in 2007. These regulations included a much narrower definition of "substantial risk of forfeiture" than many had hoped would apply, narrower even than the definition under Section 83. For example, a service provider cannot add a risk of forfeiture after he already has a legally binding right to the compensation. Nor can he subject a payment to a substantial risk of forfeiture beyond the date on which he otherwise could elect to receive it, unless the present value of the amount subject to a substantial risk of forfeiture is materially greater than the present value of the amount the recipient otherwise could have elected to receive. These provisions crystallize a position long held by staff members at the Service that no rational person would voluntarily subject to a risk of forfeiture compensation to which he is otherwise freely entitled, unless the person was substantially certain that there was no real risk of forfeiture or likelihood of future gain.

The regulations also provided guidance on when a risk of forfeiture is "substantial." Taxation under Section 409A cannot be deferred merely because a payment is conditioned upon "refraining from the performance of services," such as a covenant not to compete. Furthermore, any extension of a period during which compensation is subject to a risk of forfeiture is to be disregarded. Therefore, a rolling risk of forfeiture is invalid unless the participant complies with the rules on subsequent elections. These rules permit a delay in payment only if the election is made at least 12 months prior to the date on which the payment of the deferred amount would otherwise commence, the election takes effect no earlier than 12 months after it is made, and payment is deferred for at least five (5) years after the date on which payment has been made.

Finally, the regulations provided an exemption for "separation pay plans" that was narrower than the exemption of "severance pay plans" under ERISA. Not only does the definition of "separation pay plan" incorporate ERISA's restrictions on the amount and timing of payment, but is also requires an exempt separation pay plan to limit payment to an involuntary separation from service or pursuant to a window program.

Although the regulations under Section 409A clearly did not permit some practices that had become commonplace under Section 457(f), there was still some debate as to how the two sets of rules fit together. For example, could it be argued that a rolling risk of forfeiture put into place prior to the enactment of Section 409A would still be valid under Section 457(f)? Or that a severance arrangement that failed the definition of "separation pay plan" under Section 409A could still be exempt from Section 457?

Three months after the release of the final regulations under 409A of the Code, the Service issued IRS Notice 2007-62, which announced its intent to issue new guidance under Section 457(f) that would define "substantial risk of forfeiture" under rules similar to Section 409A. The notice makes specific mention of the rules that would prohibit rolling risks of forfeiture and unilateral deferrals of compensation to which a participant is already entitled, as well as the rules that would

Designing Deferred Compensation Plans for Governmental Employers and Tax-Exempt Organizations (continued)

not treat a covenant not to compete or other agreement not to perform services as a substantial risk of forfeiture. The notice also states that the Service anticipates issuing guidance defining "severance pay plan," for purposes of the exemption from Section 457, in a manner that is substantially similar to the exception for "separation pay plan" under Section 409A.

At least one staff member of the Service has said publicly that the new 457(f) guidance is expected to be issued later this year. In light of the Service's stated intent to square Section 457(f) with Section 409A, any new Section 457(f) plan should be drafted with a view to complying with both sets of regulations, including Section 409A's stricter restrictions on the timing of deferrals, payment and vesting. Although the new Section 457(f) guidance is expected to be prospective, employers may currently rely on the anticipatory guidance under Notice 2007-62. Doing so will avoid the uncertainty that comes, for example, with a salary deferral or rolling risk of forfeiture that turns out to be invalid.

In this regard, the short-term deferral exemption can be a particularly valuable opportunity for Section 457(f) plans. The final regulations under Section 409A carve out from the definition of "deferral of compensation" any payment made under a plan that requires actual or constructive receipt within 2½ months after the taxable year in which the payment is no longer subject to a substantial risk of forfeiture. The inclusion of an amount into income under Section 457(f) is treated as a payment for this purpose. If the plan incorporates a risk of forfeiture that passes muster under both sets of rules, the compensation will become includible under Section 457(f) at the same time that the risk of forfeiture lapses under Section 409A, and therefore would qualify as a short-term deferral.

Typically, participants in Section 457(f) plans elect to receive a payment of their deferral when the amount becomes includible in income. Doing so ensures that participants have funds to meet the corresponding tax obligation. If compensation is deferred beyond the date on which it is no longer subject to a substantial risk of forfeiture, any earnings that accrue after that date may be excluded from gross income until they are paid or made available. However, this additional deferral can pose a problem under Section 409A because any amounts that are not includible in income under Section 457(f) on the date on which the substantial risk of forfeiture lapses will not automatically be covered by the short-term deferral exception. Therefore, participants who do not take a complete distribution of their 457(f) deferrals will need to satisfy a separate exemption with respect to post-vesting earnings or ensure that they are subject to a valid deferral election under Section 409A.

Section 457(f) plans that already incorporate some of the provisions that would not be effective under Section 409A, such as invalid deferral elections, rolling risks of forfeiture and risks of forfeiture that purport to extend beyond the vesting date, should be reviewed on a case-by-case basis. Some of these provisions may need to be corrected under the documentary correction program outlined in Notices 2010-6 and 2010-80. Other provisions may not be eligible for immediate correction or may be more effectively addressed after the new Section 457(f) guidance is issued. Therefore, if you have plans that have any of these features, we recommend having them reviewed by the Pillsbury attorney with whom you usually work or one of the members of our Executive Compensation & Benefits practice section.

Endnotes

1. In 2011, the dollar limit is the lesser of $16,500 or the participant's annual compensation. Participants who are age 50 or older may also make a catch-up contribution of up to $5,500. A special catch-up contribution is also available to participants in the three years prior to normal retirement age.

2. Transfers are permitted between tax-exempt 457 plans, but because these plans must be unfunded, only the liabilities are assumed.

Mark Jones is a senior associate in the Los Angeles office. He can be reached at 213.488.7337 or mark.jones@pillsburylaw.com.

California Adopts Retroactive Conformity to Federal Exclusion from Gross Income for Adult Children Health Benefits

by Lori Partrick and Christine L. Richardson

In states that have not conformed, or do not automatically conform, to the Internal Revenue Code changes made by the Patient Protection and Affordable Care Act ("PPACA"), the value of health benefits provided to adult children may be considered income for state income tax purposes unless the child also meets the applicable state definition of a tax dependent. California has now enacted conforming legislation, retroactive to the effective date of PPACA, making the federal income exclusion applicable for California state income tax purposes and thus eliminating the need to report imputed income for adult children's benefits.

As reported in our client alert dated January 13, 2011, the value of employer-provided health benefits provided to any child who is under the age of 27 at the end of the taxable year is excluded from gross income for federal income tax purposes, regardless of whether the child qualifies as the employee's "tax dependent" under the Internal Revenue Code. However, the tax treatment of such benefits for state income tax purposes will depend on whether the particular state conforms to the Internal Revenue Code as in effect when the PPACA amendments to the Internal Revenue Code became effective.

Internal Revenue Code Section 105(b) generally excludes from gross income the value of employer-provided benefits under a health plan. As a "selective conformity" state, California needed to enact legislation adopting the PPACA amendments for the income exclusion to apply for state income tax purposes when benefits are provided to a child who is not the employee's tax dependent under California law. Legislation to make California tax law conform to federal law with regard to adult children was introduced during the 2010 legislative session, but the bill failed to pass. In the absence of conforming legislation, California employers providing health benefits to adult children have been wrestling with how to track the status of such adult children and the accompanying imputed income issues.

California tax conforming legislation was reintroduced in 2011 as Assembly Bill 36. The bill easily passed in both the Assembly and Senate, and was signed into law by Governor Brown on April 7, 2011. A.B. 36 provides for retroactive tax conformity with PPACA regarding the gross income exclusion for adult children. The PPACA amendments and hence A.B. 36 became effective on March 23, 2010. Accordingly, employers who reported W-2 income for California state income tax purposes based on health benefits provided to adult children during 2010 should issue amended W-2 forms to affected employees. Employers can refer to the Employment Development Department website at www.edd.ca.gov for guidance, which should soon be forthcoming on how to amend 2010 reported information. Employees may correct their wage statements by filing Form 540X, available at www.ftb.ca.gov/forms/2010/10_540x.pdf, with the California Franchise Tax Board.

Similar state tax code amendments are in process in other states.

For more information on PPACA, see our client alerts dated March 30 and May 13 and September 8 and September 9, 2010 and our white paper dated July 12, 2010.

Lori Partrick is a senior associate in the San Diego North County office. She can be reached at 858.509.4087 or lori.partrick@pillsburylaw.com.

Christine L. Richardson is a partner in the San Francisco office. She can be reached at 415.983.1826 or crichardson@pillsburylaw.com.

For more information, please contact:

New York
Susan P. Serota
+1.212.858.1125
susan.serota@pillsburylaw.com

Peter J. Hunt
+1.212.858.1139
peter.hunt@pillsburylaw.com

Scott E. Landau
+1.212.858.1598
scott.landau@pillsburylaw.com

Washington, DC
Howard L. Clemons
+1.703.770.7997
howard.clemons@pillsburylaw.com

San Diego North County
Jan H. Webster
+1.858.509.4012
jan.webster@pillsburylaw.com

San Francisco
Christine L. Richardson
+1.415.983.1826
crichardson@pillsburylaw.com

Silicon Valley
Cindy V. Schlaefer
+1.650.233.4023
cindy.schlaefer@pillsburylaw.com

Editors
Scott E. Landau
John H. Battaglia

Editorial Staff
Bradley A. Benedict
Kathleen D. Bardunias

For mailing list inquiries, please email
executivecomp@pillsburylaw.com

Pillsbury Winthrop Shaw Pittman LLP | 1540 Broadway | New York, NY 10036 | 877.323.4171 | www.pillsburylaw.com
ADVERTISING MATERIALS. This may be considered advertising under the rules of some states. The hiring of a lawyer is an important decision that should not be based solely upon advertisements. Furthermore, prior results, like those described in this brochure, cannot and do not guarantee or predict a similar outcome with respect to any future matter, including yours, that we or any lawyer may be retained to handle. Not all photos used portray actual firm clients. The information presented is only of a general nature, intended simply as background material, is current only as of its indicated date, omits many details and special rules and accordingly cannot be regarded as legal or tax advice.

The information presented is not intended to constitute a complete analysis of all tax considerations. Internal Revenue Service regulations generally provide that, for the purpose of avoiding United States federal tax penalties, a taxpayer may rely only on formal written opinions meeting specific regulatory requirements. The information presented does not meet those requirements. Accordingly, the information presented was not intended or written to be used, and a taxpayer cannot use it, for the purpose of avoiding United States federal or other tax penalties or for the purpose of promoting, marketing or recommending to another party any tax-related matters. © 2011 Pillsbury Winthrop Shaw Pittman LLP. All rights reserved.