



Alert

Employee Benefits & Executive Compensation
Client Service Group

To: Our Clients and Friends

April 12, 2011

Plan Administrators - Reminder to Review Confidentiality Procedures for Qualified Retirement Plans

Plan administrators of plans that offer employer stock as an investment alternative should review the disclosures provided to plan participants. Investment in employer stock represents a significant litigation threat for plan fiduciaries. However, under ERISA § 404(c), if a plan fiduciary provides participants with certain disclosures (and meets certain other requirements set forth in the ERISA § 404(c) regulations), the plan fiduciary may be relieved of liability for participant losses that are the direct result of the participant's decision to invest in employer stock.

Under current Department of Labor regulations, the required disclosures under ERISA § 404(c) include a current prospectus and a description of any voting or tender rights passed to the participant through the plan. Employers must maintain information relating to the purchase, holding, or sale of employer stock, and the exercise of voting (and other) rights with respect to such stock by participant in accordance with procedures which are designed to safeguard the confidentiality of such information (except to the extent necessary to comply with Federal or state laws not preempted by ERISA).

In 2010, the Department of Labor issued regulations requiring additional disclosures on the subject effective for plan years beginning on or after November 1, 2011 (e.g. January 1, 2012 for calendar year plans). The additional disclosures for stock plans include:

- A description of the special procedures that the plan has put in place for ensuring confidentiality of the purchase, holding and sale, and exercise of voting, tender and similar rights with respect to employer stock held in a participant's account under the plan; and
- The name, address and phone number of the plan fiduciary responsible for monitoring compliance with these special procedures.

To reduce potential liability for participant investment losses associated with the decision to invest in employer stock under a plan, the plan's fiduciaries should review its current participant disclosures to

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be sure they comply with the existing regulations and prepare to comply with the new regulations when they become effective.

If you have any questions regarding anything discussed in this Alert, the attorneys and other professionals of the Employee Benefits and Executive Compensation group of Bryan Cave LLP are available to answer your questions.

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