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Year-End Executive Compensation Matters and Issues Going Forward

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As we approach the end of the year, companies need to be mindful that their ability to correct documentary failures of Section 409A with little or no adverse tax consequences is rapidly closing and that new executive compensation reporting requirements will be required in the upcoming year, pursuant to the Dodd-Frank Act.

These issues, and more, will be discussed in detail at our upcoming Breakfast Briefing to be held in our San Francisco office. We encourage you to attend (to view the Breakfast Briefing invitation, click [here](#)).

Notice 2010-6

Notice 2010-6 (the "Notice") lays out the new IRS corrections program, which allows taxpayers to correct documentary violations contained in nonqualified deferred compensation plans. The Notice provides helpful guidance on key areas of concern, including, but not limited to, the following:

- Ambiguous Plan Terms
- Correction of Impermissible Definitions
- Correction of Impermissible Payment Periods
- Correction of Impermissible Payment Events

The Notice is highly technical and a discussion of its myriad requirements, exceptions and nuances is beyond the scope of this newsletter. The key point to take home is that in many instances the Notice allows the taxpayer to avoid the imposition of penalty taxes related to Section 409A and that correction by the end of this year will in certain instances be the only way to avoid such penalties.

Dodd-Frank Act Executive Compensation Issues

The Dodd-Frank Act is extraordinarily complex, but for executive compensation purposes the main issues for public companies to focus on are as follows:

- Incentive Compensation "Clawbacks"
- Say on Pay
- Golden Parachute Compensation
- Independent Compensation Committees and Compensation Consultants

Manatt, Phelps & Phillips, LLP's attorneys stand ready to assist you with taking advantage of the corrections program and complying with the requirements imposed by the Dodd-Frank Act. Once again, we encourage you to attend our upcoming Breakfast Briefing in

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our San Francisco office (click link above to view invitation).

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