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The Wait is Over – Facing the Final 409A Regulations

April 12, 2007

**Presented by ACC's Corporate & Securities Law Committee
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The Panel

Moderator:

Sarah Starkweather - Chair of ACC's Corporate and Securities Law Committee; Director and Counsel, UBS Securities LLC

Speakers:

Dan Hogans – Attorney Advisor in the Office of Benefits Tax Counsel, U.S. Treasury Department

Mark Wincek – Chair of the Benefits and Labor Department and Partner, Kilpatrick Stockton LLP

Lois Colbert – Partner, Kilpatrick Stockton LLP

Jennifer Schumacher – Partner, Kilpatrick Stockton LLP

Introduction: Overview of the Final Regulations and the Transition to Compliance

409A Coverage

- Excluded plans
- Definition of deferred compensation
- Exceptions: Short-term deferrals, stock rights, restricted stock, foreign arrangements, indemnification arrangements, separation pay arrangements, reimbursement and fringe benefit plans, non-taxable benefits, legal settlements, split-dollar life insurance, educational benefits

Definition of a Plan

- Plan aggregation rules
- Written plan requirement

Definition of Substantial Risk of Forfeiture

Initial Deferral Elections

- Nonelective deferrals
- Performance-based compensation
- Initial eligibility
- Forfeitable rights
- Commissions
- Separations from service
- Annualizing part-year compensation; USERRA

Time and Form of Payment

- Specified time or fixed schedule
- Separation from Service
 - Delay for specified (key) employees
- Death and disability
- Change in control
- Unforeseeable emergencies
- Other issues: Multiple payment events, delay in payment by service recipient; disputed payments and refusals to pay, back-to-back arrangements

Prohibition on Accelerations

- Plan termination and liquidation
- Conflicts of interest and ethics rules
- Non-federal taxes
- Settlements of bona fide disputes
- Disability
- Cashouts

Changes in the Time and Form of Payment

- Annuities
- Multiple payment events
- Domestic relations orders

Plans Linked to Qualified Plans and Other Arrangements

Statutory Effective Dates

- Earned and vested
- Calculating the grandfathered benefit
- Material modifications

Calculation and Timing

- Income Inclusion
- Reporting
- Withholding

Questions and Discussion

For further information, please contact one of our speakers:

- Mark Wincek – MWincek@KilpatrickStockton.com
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