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EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION
ALERT

FEBRUARY 2, 2007

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www.mintz.com

One Financial Center
Boston, Massachusetts 02111
617 542 6000
617 542 2241 fax

701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
202 434 7300
202 434 7400 fax

666 Third Avenue
New York, New York 10017
212 935 3000
212 983 3115 fax

707 Summer Street
Stamford, Connecticut 06901
203 658 1700
203 658 1701 fax

Changes to 402(f) Notices under the Pension Protection Act of 2006

Under Section 402(f) of the Internal Revenue Code, within a reasonable period of time before making an eligible rollover distribution from a qualified benefit plan to participants, plan administrators are required to provide the participants with a written explanation of any rollover options available with respect to the distribution and related information. The Pension Protection Act of 2006 implemented some changes to the treatment of distributions from plans to non-spouse beneficiaries. Prior to the Pension Protection Act, non-spouse beneficiaries were not allowed any rollover options. Although non-spouse beneficiaries still cannot roll over a distribution to another qualified plan, the new law now allows non-spouse beneficiaries to roll over an eligible rollover distribution from a qualified plan to an IRA. The new rules also provide that these transfers will be treated as being made to inherited IRAs of non-spouse beneficiaries, which are subject to certain minimum distribution requirements.

Accordingly, we recommend that you immediately revise your current form of 402(f) notice to reflect the changes to the rollover rules under the Pension Protection Act by replacing, in the section of your notice regarding "Surviving Spouses, Alternate Payees and Other Beneficiaries," the paragraph stating that "If you are a beneficiary other than a surviving spouse or an alternate payee, you cannot choose a direct rollover, and you cannot roll over the payment yourself" with the following paragraph:

> *If you are a beneficiary other than a surviving spouse or an alternate payee, such as a child or domestic partner, you may choose to have a payment that can be rolled over, as described in Part I above, paid in a DIRECT ROLLOVER to a traditional IRA or paid to you. You may not roll over the payment to yourself or to an eligible employer plan. The IRA accepting the transfer is treated like a non-spouse inherited IRA, under which benefits*

1620 26th Street
Santa Monica, California 90404
310 586 3200
310 586 3202 fax

1400 Page Mill Road
Palo Alto, California 94304
650 251 7700
650 251 7739 fax

9255 Towne Centre Drive
San Diego, California 92121
858 320 3000
858 320 3001 fax

The Rectory
9 Ironmonger Lane
London EC2V 8EY England
+44 (0) 20 7726 4000
+44 (0) 20 7726 0055 fax

must be distributed in accordance with the applicable required minimum distribution rules. In general, distributions from the rollover IRA must either be paid to you in full within 5 years of the employee's death or must commence within 12 months of the employee's death over your life expectancy. The benefits cannot be rolled over again from the rollover IRA.

We would be happy to answer any questions you may have about this recent change in the law or assist you with making the necessary changes to your form of 402(f) notice.

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If you have any questions concerning the information discussed in this advisory or any other employee benefits topic, please contact one of the attorneys listed below or your primary contact with the firm who can direct you to the right person. We would be delighted to work with you.

Alden Bianchi
617.348.3057 | AJBianchi@mintz.com

Tom Greene
617.348.1886 | TMGreene@mintz.com

Addy Press
617.348.1659 | ACPress@mintz.com

Pamela Fleming
617.348.1664 | PBFleming@mintz.com