Walsh, Kathryn

From:	███████████████████████
Sent:	Thursday, January 12, 2012 11:17 AM
To:	Verne, B. Michael; Walsh, Kathryn
Subject:	Deferred Compensation Plans

Hi Kate and Mike.

I am writing to close the loop on my inquiry at the end of December concerning equity-based compensation plans by employers ("Companies") and their use of rabbi trusts to facilitate deferred compensation plans. Since I sent my initial e-mail inquiry to you, I have learned more about such trusts and believe that Company shares placed in such trusts should not be deemed to be beneficially held by executives until such shares are distributed to executives. I am writing to confirm that you agree with this analysis.

The purpose of deferred compensation plans is to permit executives to defer receipt of salary and bonus that would otherwise be nondeductible by the Company under section 162(m) of the Internal Revenue Code of 1986 as amended, which limits to $1 million the amount of compensation paid to certain executive officers that may be deducted in a single tax year. Deferred amounts are paid to executives in a subsequent tax year when it is expected that the amounts will be deductible. Deferred amounts are often deemed to be invested in hypothetical shares of Company common stock, with the number of phantom shares allocated to a participant's account determined by dividing the amount of compensation deferred by the market value of the Company's common stock on the deferral date.

There are various ways to structure a deferred compensation plan ("Plan") for executives. Under such plans, Companies sometimes establish an irrevocable rabbi trust to assist in the payment of amounts that become due to executives under the Plan. I understand that rabbi trusts do or could contain the following features and characteristics.

(1) Under the Internal Revenue Code, rabbi trusts are deemed grantor trusts and the Company is the grantor.

(2) The principal of such trusts, along with any earnings thereon, are held separate and apart from other funds of the Company and are used exclusively for the uses and purposes of Plan participants.

(3) Plan participants do not have any preferred claim on any assets of such trusts. Any rights created under the Plan and the trust agreement are <u>unsecured</u> contractual rights of Plan participants against the Company. <u>Any assets held by such trusts are subject to the claims of the Company's general creditors</u> under federal and state law in the event of insolvency.

(4) For federal tax purposes, the creation of a rabbi trust and the investment of trust assets in Company common stock do not cause the Plan to be other than "unfunded," i.e. payable from the employer's general assets. <u>The Company is treated as the owner of the trust and must include all of the income, deductions and credits of the trust in computing its own taxable income and credits</u>.

(5) <u>The Company designates the trustee(s) of rabbi trusts and has the sole right to remove and replace such trustee(s).</u>

(6) All rights associated with the assets held in the rabbi trust, including <u>the right to vote Company common stock held by the trust, are exercised by the trustee</u> or the person designated by the trustee.

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(7) The executives who participate in the Plan do not have a right to demand distributions from the rabbi trusts. The Company has the discretion to pay a Plan participant directly and if a Company chooses to do so, the shares held in the rabbi trust for the Plan participant would then be distributed to the Company.

(8) <u>The interests of the participants in the Plan are indistinguishable for tax purposes from the interests of holders of restricted stock unit awards prior to the distribution of shares of stock to satisfy such awards.</u>

Please confirm that you agree that executives who participate in Plans, with the terms described above, are not deemed to have beneficial ownership over any Company securities held by such trusts unless and until the trust distributes Company shares to such participants.

Thanks as always for your help. Please let me know if you have any questions.

Best regards,

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