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**Re: Reporting Under IRS §6039 is Coming**

Dear Clients and Other Friends:

After several waivers by the Internal Revenue Service ("IRS"), regulations under §6039 of the Internal Revenue Code are now effective for 2010 Incentive Stock Option (ISO) and Employee Stock Purchase Plan (ESPP) transactions. These regulations require companies to provide participants with Form 3921 for ISO exercises and Form 3922 for ESPP exercises. Companies will also be required to file these same forms with the IRS. These reporting requirements, which apply only to ISOs and ESPPs, start in 2011 for transactions in 2010.<sup>1</sup>

The reporting requirement for ISOs on Form 3921 arises upon exercise, whereas the reporting requirement for ESPPs on Form 3922 arises upon the "first transfer" of stock by the employee who exercised the option. The transfer of ESPP shares to an employee's brokerage account does constitute a "first transfer", and thus for many public companies with ESPPs that deliver shares to the employee's brokerage account, the exercise and "first transfer" will be simultaneous.

Form 3921 (for ISOs) and Form 3922 (for ESPPs) both require specific data, such as the date the option was granted, the date the option was exercised, the exercise price per share, etc. These forms must be filed for each ISO exercise or ESPP transfer that occurred during the calendar year. These filing requirements will begin in 2011 for transactions from the previous calendar year. Statements must be delivered to participants by January 31 and filed with the IRS by February 28 for paper filings and March 31 for electronic filings.

If your company issues ISOs or sponsors an ESPP, we recommend you consider these new requirements promptly. Please call us with any questions.

Very truly yours,

Jule M. Hannaford IV

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<sup>1</sup> Employee stock purchase plans through which the employee buys employer stock for 100% of market value are not subject to Form 3922 reporting.