

employee benefits, executive compensation and plan investments under erisa

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The firm has a broad-based practice in employee benefits, executive compensation and fiduciary matters under the Employee Retirement Income Security Act (ERISA). Our attorneys take a team approach that can provide comprehensive legal advice encompassing many practice areas. Our clients in these have included both individuals, publicly-held and closely-held corporations, partnerships, investment funds and other business entities engaged in a wide range of industries, as well as, churches, foundations and other tax-exempt organizations. Set out below is a synopsis of our work in these areas.

Employee Benefits

Our attorneys advise employers on the full gamut of tax-qualified retirement plans they may maintain for their employees, including pension, profit sharing and 401(k) plans, and, for our not-for-profit clients, 403(b) annuity programs. Our work includes guiding employers in plan design, drafting plan documents, securing IRS determination letters for new plans and amendments to existing plans, advising plan sponsors about tax qualification and ERISA compliance issues arising in the course of plan administration, as well as, plan terminations. We also have significant experience in guiding tax-qualified plans through the various remedial correction programs of the Internal Revenue Service.

We also counsel employers as to tax and ERISA issues relating to employee welfare benefit programs for employees, including health care, medical expense and dependent care reimbursement plans, VEBA's used to fund post-retirement medical and insurance benefit coverages, and Section 125 "cafeteria" plans.

Another significant aspect of our practice involves guiding our clients through employee benefit issues that arise in connection with mergers, acquisitions, divestitures, spin-offs, joint ventures and other similar business transactions.

Executive Compensation

Our attorneys have extensive experience in working with the senior management of U.S. and foreign clients in preparing and negotiating compensation programs for their outside directors, executive officers and management-level employees. Our work in this regard has included tax and design considerations, as well as, corporate board responsibilities in connection with the following:

- deferred compensation plans that comply with Section 409A of the Internal Revenue Code;
- annual and long-term bonus compensation plans;
- incentive and nonqualified stock option plans, and awards of restricted stock and phantom stock units;
- structuring cash and stock-based compensation for senior executives to qualify for the “performance based” exception to the \$1 million limit on deductibility under Code section 162(m);
- “top hat” arrangements and supplemental executive retirement plans;
- negotiated severance packages, executive change in control agreements and “golden parachute” arrangements.

ERISA Fiduciary Matters

We also provide advice relating to the investment of plan assets. Our work for plan sponsors in this regard includes negotiating and drafting trust agreements, investment management agreements, and agreements with those providing recordkeeping and other administrative services to plans, advising “in-house” and external plan fiduciaries as to their duties, responsibilities and potential liabilities under ERISA.

Issuers of private equity and other investment vehicles have sought our counsel in offering investments to employee benefit plans. We advise on the application of fiduciary requirements, ERISA’s plan asset rules, and prohibited transaction rules on the proposed investments, and assist these clients in the development of investment products for employee benefit plans. For example, we have

- worked with investment funds on the establishment, structure and operations of venture capital operating companies (VCOCs) and real estate operating companies (REOCs);
- guided fund managers in monitoring benefit plan investments to avoid ERISA plan asset characterization;
- advised indenture trustees regarding ERISA fiduciary concerns in connection with the issuance of securitized debt and “repo” transactions.