

## FOR IMMEDIATE RELEASE

### PREPARING FOR DISCLOSURES UNDER NEW FORM 990 - ARE YOU READY?

Upper Saddle River, NJ - July 23, 2008 - Many not-for-profit organizations will be utilizing the new Form 990 for filing tax information this year. The recent issuance of these "final" regulations on financial reporting for tax-exempt organizations is a long-awaited reaction to misfilings that have occurred over the years, whether intentional or not. Reporting under the new Form 990 is an outcome to actions caused by the Sarbanes-Oxley Act and the Securities and Exchange Commission relative to good governance and disclosure of executive pay, respectively, in publicly-traded companies.

The updated format requires additional disclosures that are much more detailed than the prior form, particularly as they pertain to matters of compensation for executives, disqualified persons, other key employees (current and former), highly compensated employees, and directors/trustees (current and former). Disclosures include a breakdown of the pay packages and look back for five (5) years. The new Form 990 also contains a series of questions which must be answered pertaining to the organization's policies and procedures. These questions are meant to address the Intermediate Sanctions requirements on rebuttable presumption relative to the Board's decisions on compensation, namely:

*"Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision: (a) The organization's CEO, Executive Director, or top management official? (b) Other officers or key employees of the organization? Describe the process in Schedule O"<sup>1</sup>*

The new Form 990 places a tremendous amount of accountability on the Board and Compensation Committee relative to proper governance and compensation decisions. Relative to compensation in the new Form 990, the Board must certify that it:

- Reviewed and approved compensation for all covered individuals, provided that persons with a conflict of interest with respect to the compensation arrangement at issue were not involved.
- Used comparable compensation data for similarly-situated qualified persons in functionally comparable positions at similarly situated organizations.
- Documented and kept appropriate records with respect to the negotiations and decisions regarding the compensation arrangements.

What is interesting to note is that many Boards of not-for-profit organizations have limited knowledge of the IRS' Intermediate Sanctions rules (IRC §4958), which is particularly problematic given the enhanced disclosures requirements under the new Form 990. For organizations that are found to be in violation of Intermediate Sanctions, significant penalties are imposed on both the executive and on each member of the Board responsible for making those compensation decisions. The effect can reach beyond the financial impact, as media and

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<sup>1</sup> Form 990, Question 15 of Section B - Policies.



public scrutiny can seriously affect their perception of the organization in the outside world, and ultimately, may impact the ability of the organization to fulfill its mission.

Therefore, Boards and their Compensation Committees must gain an awareness and knowledge of Intermediate Sanctions and its requirements. It is extremely important that they understand and take appropriate action to obtain a safe harbor on their compensation practices through the application of the rebuttable presumption. With these tools, a better sense of comfort can be achieved by the Board and the Compensation Committee relative to its practices on executive compensation, and can also provide the opportunity to take proactive measures relative to corrective action where compensation may appear outside market parameters.

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