

## LEGAL UPDATES AND NEWS

### Employee Benefits Alert: Reporting Obligations for Exercising Incentive Stock Options and Employee Stock Purchase Plan Options

In November 2009, the Internal Revenue Service (“IRS”) adopted reporting rules (the “Final Rules”) that require employers to file a Form 3921 with the IRS to report information regarding the exercise of incentive stock options (“ISOs”) and to file a Form 3922 with the IRS to report information regarding the exercise of options awarded pursuant to employee stock purchase plans (“ESPPs” and “ESPP Options”). We initially notified you of these new reporting requirements in January 2010. The purpose of this newsletter is to remind you that you must comply with the reporting requirements beginning in 2011 for ISOs and ESPP Options exercised during the 2010 calendar year. These rules do not apply to the exercise of nonqualified stock options. *For a more detailed description of the Final Rules, please see our newsletter dated January 18, 2010, which is available on our website at [www.luselaw.com](http://www.luselaw.com).*

#### I. Reporting Requirements

Prior to 2011, employers were required to provide only an information statement to employees who exercised ISOs or received shares pursuant to the exercise of an ESPP Option. Beginning in 2011, with respect to an employee’s exercise of ISOs in 2010, an employer is required to file a Form 3921 with the IRS and, in lieu of furnishing the information statement to employees, furnish the Form 3921 to employees who exercised ISOs during the year. Similarly, an employer is required to file a Form 3922 with the IRS and also furnish the Form 3922 to employees who exercised ESPP Options during 2010 (in lieu of the information statement).

Form 3921 and Form 3922 require disclosure of the following information:

- The employer’s name and identification number.
- The employee’s name and social security number.
- The date the ISO or ESPP was granted to the employee.
- The date the ISO or ESPP was exercised by the employee.
- The exercise price per share.
- The fair market value of a share of stock on the date the ISO or ESPP was exercised.
- The number of shares of stock transferred pursuant to the exercise of the ISO or ESPP.

#### II. Filing Deadlines

The filing deadlines (for the 2010 calendar year) for the Form 3921 and Form 3922 are as follows:

**January 31, 2011:** Forms 3921 and Forms 3922 must be provided to the employees.

**February 28, 2011:** Deadline for paper filers to file the Forms 3921 and Forms 3922 with the IRS.

**March 31, 2011:** Deadline to electronically file the Forms 3921 and Forms 3922 with the IRS.

#### III. Penalties for Late Filings

Failure to timely file a Form 3921 or a Form 3922 with the IRS may result in the following penalties:

- \$30 per form if you file within 30 days of the deadline (maximum of \$250,000 per year)
- \$60 per form if you file by August 1 (maximum of \$500,000 per year)
- \$100 per form if you file after August 1 or never complete the filing (maximum of \$1,500,000 per year)
- At least \$250 per form if the late filing or failure to file is due to intentional disregard (no annual maximum). It could be very expensive to intentionally disregard these filings.

The failure to distribute these forms to employees could result in similar penalties as those provided above.

\*\*\*\*\*

For further details regarding this newsletter or if you have any executive compensation or employee benefits questions, please contact any of the persons listed below.

|                         |   |                |
|-------------------------|---|----------------|
| <b>Beverly J. White</b> | ■ | (202) 274-2005 |
| <b>Norma Sharara</b>    | ■ | (202) 274-2035 |
| <b>Max Seltzer</b>      | ■ | (202) 274-2038 |
| <b>Jeff Cardone</b>     | ■ | (202) 274-2033 |