

# AXA Notice

**F R O M   A D V A N C E D   M A R K E T S**

## IRS Extends Deadline for 409A Documentation Compliance

The IRS recently announced (Notice 2007-78) that taxpayers will now have until December, 31, 2008 to bring documents into compliance with the final non-calculated deferred compensation (NQDC) regulations under IRS Section 409A. This extends the date by one year from the April 2007 communication where the IRS issued final 409A regulations. In the April 2007 announcement, the IRS provided guidance regarding the requirements for deferral elections and payment timing under section 409A. The effective date of the regulations is January 1, 2008 and all plans subject to Code Section 409A will need to be compliant with the final regulations as of January 1, 2008. These regulations are in response to legislation enacted by Congress in 2004 to address concerns involving reported abuses of non-calculated deferred compensation plans.

### Notice 2007-78 addresses the following issues:

- Provides that deferrals of compensation deferred after Dec. 31, 2007 and before Jan. 1, 2009, will not comply with Sec. 409A unless the plan designates in writing a compliant time and form of payment of the deferred compensation. This must be done prior to Jan. 1, 2008.
- States that a plan will satisfy this requirement if it provides an objective manner to determine payment payable upon: a separation from service, a change in control event, an unforeseeable emergency, a specified date or fixed schedule of payments, death or disability. These events are further defined in Code Sec. 409A.
- Provides additional guidance regarding the application of the final regulations to employment agreements and cash out features of Sec. 409A
- Announces that the grace period provided to offshore trusts in IRS Notice 2006-33 is not being extended beyond the December 31, 2007 deadline.
- Announces that the Treasury and the IRS anticipates issuing guidance containing a limited voluntary compliance program that will permit corrections of certain unintentional operational violation of Section 409A.

In order to comply with the extension of the written plan requirement, the plan must be amended on or before Dec. 31, 2008 retroactively to Jan. 1, 2008. This requirement is satisfied only if the written plan, as amended, contains all of the written provisions required by the final regulations and the written plan provision accurately reflects the operation of the plan on and after Jan. 1, 2008 and through the date of the amendment.

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