

## EXECUTIVE AND INCENTIVE COMPENSATION

Practice

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### PRIMARY CONTACTS

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Haynes and Boone is one of the best places for public and private companies to turn to for counseling and guidance on executive and incentive compensation issues. Our lawyers provide clients with knowledge and experienced counseling in all aspects of executive compensation issues. We devise compensation programs to help clients link pay to performance, retain key employees and take advantage of relevant tax regulations. And when there are changes made to the law or new government enforcement efforts are underway, our lawyers will make sure you are kept up to date and remain in compliance with applicable laws.

### Plan Compliance and Documents

- Equity-based compensation plans
- Nonqualified deferred compensation plans for taxable and tax-exempt entities
- Retention and bonus plans
- Supplemental executive retirement plans
- Change in control agreements

### Shareholder Adviser Compliance

- Counsel clients facing scrutiny from Institutional Shareholder Services or Glass, Lewis & Co.
- Help clients navigate limitations that shareholder advisers place on equity incentive plans
- Draft compensation and incentive programs in a manner that anticipates issues likely to be raised by Institutional Shareholder Services or Glass Lewis
- Work with Institutional Shareholder Services and Glass Lewis to win preliminary approval of draft compensation plans

### Code Section 409A Compliance

- Review and revision of existing plans and agreements
- Correction of plan document and operational failures

### Code Section 162(m) Compliance

- Plan document terms
- Shareholder approval requirements
- Composition of the Compensation Committee
- Performance metrics

- Defend shareholder suits arising from 162(m) compliance issues

#### **Drafting and Negotiation of Agreements**

- Equity Incentive Plans
- Change of Control/Golden Parachute Agreements
- Phantom Equity Plans, including in Canada, the U.K., and other markets
- Employment Agreements
- Severance/Retention Agreements
- Employee Non-Compete/Confidentiality Agreements
- Consulting and Director Fee Arrangements
- Equity Grant Agreements with executives, including “clawbacks” and other “bad boy” clauses

#### **Assistance With Global Executive Compensation Issues**

- Review and compliance of foreign pension and compensation arrangements that cover U.S. taxpayer employees
- In bound foreign employee compensation and taxation
- Advise corporate subsidiaries in countries outside of the U.S., including Canada, Mexico, the United Kingdom, China, Israel and Norway, among others
- Design cross-border, employee compensation programs to maximize tax savings in various jurisdictions

#### **Executive Bonus Plans**

- Draft bonus plans for private and public companies in various industries
- Advise energy clients on innovative bonus programs tied to oil and gas production

#### **Disclosures Relating To Executive Compensation**

- Proxy disclosures
- SEC and exchange disclosures
- Tax consequences of tender offers related to repriced stock options
- “Top Hat” plan disclosures

#### **Advice in Mergers and Acquisitions**

- Identification and quantification “excess parachute payments”
- Acceleration of vesting and “cashing-out” of equity grants
- Drafting change in control bonus and severance plans for executives and non-executive employees
- Structure agreements in a manner that helps avoid tax implications

**Employee vs. Independent Contractor**

- Analysis of relevant factors
- Determination of eligibility for employee benefit plans
- Code Section 409A implications of change in employment relationship