

# Client Advisory

November 11, 2008

## Payment on Grandfathered 457A Deferrals Can Be Extended Through 2017

Section 457A of the Internal Revenue Code (the "Code"), which was part of the Emergency Economic Stabilization Act of 2008, effectively eliminated an investment manager's ability to defer its receipt of fees from an offshore fund by preventing tax deferrals of income from an offshore fund for services performed after December 31, 2008. The statute also requires existing deferrals to be paid to the manager before January 1, 2018. Under a special transition rule in place under Section 409A of the Code, the timing of payments of existing deferrals can be broadly changed prior to December 31, 2008, so long as (i) the existing deferral being changed would not otherwise be paid during 2008, and (ii) an existing deferral is not being accelerated for payment in 2008 from a later year.

Consequently, given the inability of managers to make future deferrals, managers may wish to use the transition rule under Section 409A to extend existing deferrals until 2017 (or an earlier date between 2009 and 2017).

ANY MANAGER WISHING TO USE THE TRANSITION RULE TO EXTEND EXISTING DEFERRALS (THROUGH 2017 OR EARLIER) WILL NEED TO TAKE ALL NECESSARY ACTION TO EFFECT THAT CHANGE BY DECEMBER 31, 2008.

IN ADDITION, ALL DEFERRAL ARRANGEMENTS MUST COMPLY WITH THE SECTION 409A FINAL REGULATIONS BY DECEMBER 31, 2008 AND SHOULD BE REVIEWED AND, IF NECESSARY, AMENDED PRIOR TO DECEMBER 31, 2008 TO COMPLY WITH THE FINAL REGULATIONS UNDER SECTION 409A.

If you have any questions regarding this Advisory, please contact your relationship partner or Jill Darrow (212.940.7113), Edward Rayner (212.940.8515), William Duff (212.940.8532) or Ziemowit Smulkowski (312.577.4583).

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