CLIENT REMINDER

February 15, 2018

CBAS

Compensation & Benefits Advisory Services, LLC

"GOLDEN PARACHUTE" PROVISIONS MAY IMPACT A COMPANY'S EXECUTIVE COMPENSATION DISCLOSURES

The Securities and Exchange Commission's Executive Compensation Disclosure rules require narrative and quantitative disclosure of payments at, following, or in connection with a change in control (CIC) of the company. Quantitative calculations are to be performed assuming that the triggering event occurred on the last business day of the company's last completed fiscal year and that the price per share of the company's securities is the closing market price as of that date.

Under the Golden Parachute rules of Internal Revenue Code Sections 280G and 4999, if the present value of all payments made to a Disqualified Individual ("DI") which are contingent on the CIC equals or exceeds three times the DI's average taxable compensation for the five years prior to the year of the CIC, the company loses the tax deduction for any excess parachute payments (the amount in excess of one times the average taxable compensation for the five-year period). In addition, a 20% excise tax is imposed on the executive on the excess parachute payment.

A company's employment and/or change in control agreements may contain the following types of Golden Parachute provisions (or similar provisions) which could impact the payments to be made to the DI:

1. Cutback – the payment to the DI is reduced to the extent necessary to avoid the imposition of any excise tax imposed on the executive or lost deduction to the company.
2. Best Payment Cutback - the payment to the DI is reduced to the extent necessary to avoid the imposition of any excise tax but only to the extent such reduction results in the DI receiving more on an after-tax basis (i.e., the reduction is less than the excise tax due absent the reduction). If the DI is not better off with the reduction, the payments are not reduced, and the DI is responsible for the excise tax. In this situation, the company will not be able to claim a deduction for any excess parachute payments.
3. Gross-up – the company makes an additional payment to the DI to cover for the excise tax as well as all additional income, employment and excise taxes generated by such additional payments. These payments can be significant and can approach or sometimes even exceed three times the amount of the original excise tax.

For many types of payments, the amount to include in the computation is straightforward (full value). However, for many others the computation can be complex (e.g., accelerated vesting of equity compensation, provision of continuing health and welfare benefits, crediting of additional years of service for retirement plans, payments which are considered reasonable compensation for services actually rendered).

As many companies are in the process of preparing their disclosures, now is a good time to review the company's plans and agreements to determine if payments could be impacted by the Golden Parachute rules.

Please contact David Chang at 973-588-4909 or dchang@cbas-llc.com for additional information or assistance on your disclosures.