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IMPORTANT CLIENT ALERT

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To: Clients

From: Perlman & Perlman, LLP

Re: New IRS Form 990 Governance Policies and Disclosure Requirements

With the recent release of the redesigned Form 990 by the Internal Revenue Service (IRS), tax-exempt organizations are advised that new reporting requirements may impact their internal governance policies and practices. Among the many significant changes included in the redesigned Form 990, a new section on governance has been added which asks questions regarding the organization's governance policies and procedures. The governance section will require organizations to review their existing governance policies and procedures, and possibly consider adopting new ones. To comply with the updated reporting requirements, organizations are encouraged to plan ahead to develop appropriate mechanisms for collecting and disclosing information that has not previously been required.

Although it has no statutory authority to require exempt organizations to establish governance policies and procedures, the IRS believes that well-governed charities are more likely to comply with federal income tax exemption requirements than those lacking strong governance controls. Emphasizing the renewed importance the IRS is placing on the Form 990, the IRS is requiring unprecedented disclosures related to the preparation and review of the annual information return by the organization. One new question asks organizations to disclose *whether a copy of the Form 990 was provided to each voting member of the organization's governing body before it was filed*. Organizations are also now asked to *describe the process (if any) used to review the prepared Form 990*, including who conducted the review, when they conducted it, and the extent of any such review.

Part VI of the redesigned Form 990 asks for information regarding organizations' governing body and management, governance policies, and disclosure practices. Specifically, organizations must disclose *whether numerous policies and procedures are*

in place, including written policies on conflicts of interest, whistleblower protection, document retention and destruction, and joint venture participation. In order to respond affirmatively to these questions, the organization's policies must contain certain minimum criteria set forth by the IRS, and the policies must have been adopted as of the end of the organization's fiscal year. Additionally, organizations will now be asked whether the process used for determining compensation of officers, top management and key employees included review and approval by disinterested persons, comparability data, and contemporaneous documentation of the deliberation and decision.

Questions regarding the existence of a whistleblower protection policy and document retention and destruction policy are new disclosure requirements. Questions about conflict of interest policies were included in the old Form 990, but the new Form 990 goes further by asking *whether conflicts are required to be disclosed annually, and requiring organizations to describe their procedure (if any) for regularly monitoring and enforcing compliance with their conflict of interest policy.* Organizations may want to consider revising their conflict of interest policy to include a conflict of interest disclosure statement that must be completed annually by officers, directors, and key employees. According to the updated instructions, sending these key individuals an annual disclosure statement will satisfy the IRS's requirement that organizations make a "reasonable effort" to collect the information.

Although the IRS does not require organizations to have each policy discussed on the Form 990, organizations that do not have these written policies could receive additional scrutiny by the IRS. Organizations should consider whether adopting some or all of the policies is appropriate to the organization based on its particular characteristics. If organizations decide not to adopt any of the policies, it should be able to explain its rationale for not adopting those policies.

The new Form 990 must be filed by tax-exempt organizations for their 2008 fiscal years. Our firm can provide your organization with sample policies, procedures, and guidelines that would allow you to check "yes" to these governance questions on the new Form 990. We can also assist you in tailoring the policies to fit the individual needs of your organization. If you have any questions regarding the new Form 990 and whether your organization should adopt any or all of these policies and procedures, or you would like assistance in preparing any of the policies discussed above, please contact any of our attorneys at (212) 889-0575.