



TARLOW BREED  
HART & RODGERS, P.C.  
*Counsellors at Law*

# **NONQUALIFIED DEFERRED COMPENSATION**

## **Phantom Stock Plans for Private Companies**

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June 16, 2010

**2010 New England Retirement Plan  
Symposium**

# What is Nonqualified Deferred Compensation?

- A legally binding right during one taxable year to compensation payable at future date
- Deferred salary
- Deferred bonus
- Supplemental Retirement Plans
- Severance payments
- **Phantom stock plans**
- D.N.A. pension & profit sharing plans, 401(k) plans

# Phantom Stock

## Economic benefits:

- The right to receive a payment based upon the value of the Company in a Liquidity Event
- The right to receive annual “phantom stock dividends” when declared by the Company’s Board of Directors

# Phantom Stock Plan Features

- Future Appreciation
- Vesting
- Liquidity Events
- Noncompete Covenant
- *No Rights of a Shareholder*

# Income Taxes

- The receipt of Phantom Stock is not itself currently taxable, nor does the recipient have to purchase the Phantom Stock with personal funds
- But receipt of future proceeds is taxed as *ordinary income* rather than capital gain
- Tax deductible by the Company

# 6 Permissible 409A Payment Events

- *Termination of employment*
- *Death*
- Disability (a medical disability expected to last more than one year or result in death)
- Specific date specified at the time of the deferral (not an event)
- Unforeseen emergency (such as a severe financial hardship resulting from an illness or accident)
- *Change in control*

## **JEFFREY P. HART, ESQ.**

Jeffrey P. Hart is a founding member of the Boston law firm of Tarlow Breed Hart & Rodgers, P.C. The firm provides a full range of legal services in the areas of business law, taxation, real estate, litigation and estate planning. Mr. Hart concentrates his practice in advising businesses and individuals in the areas of business law, taxation, and estate planning. He is a member of the firm's management committee.

Mr. Hart was an Adjunct Professor of Law at New England School of Law in Boston from 1985 through 1997, teaching courses in Advanced Corporate Taxation and Business Planning and has also lectured on advanced topics of estate planning at Suffolk University Law School. Mr. Hart is a member of the Boston Bar Association, the Massachusetts Bar Association, and the Boston Estate Planning Council.

Mr. Hart received a degree in Business Administration from the University of Notre Dame in 1974 where he majored in accounting. He was awarded a Juris Doctor degree (cum laude) from New England School of Law in 1979. Earlier in his career, Mr. Hart practiced as a certified public accountant with Arthur Andersen & Co. in Chicago, Illinois. He is admitted to the Bars of Massachusetts, the U.S. Tax Court and the U.S. Court of Appeals, First Circuit. Mr. Hart resides in Medfield, Massachusetts with his wife and three children. Mr. Hart was voted one of the top 100 lawyers in Massachusetts in a survey of more than 37,000 Massachusetts attorneys published in the November 2004 issue of *Boston Magazine*.

Tarlow Breed Hart & Rodgers, P.C. is a 21-attorney Boston law firm with seven core practice areas: Corporate Law and Business Transactions, Estate Planning, Taxation, Litigation and Dispute Resolution, Real Estate, Municipal Law and Hospitality Law.

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