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WORKPLACE EMPLOYEE STOCK OPTION ACT OF 2002

Representatives Amo Houghton (R-NY) and John Boehner (R-OH) recently introduced the Workplace Employee Stock Option Act of 2002 (H.R. 5242)¹ that would create a new type of stock option under Internal Revenue Code Section 423(d). The purpose of the bill is to promote broad-based company ownership through the use of employee stock options on a nondiscriminatory basis using pre-tax payroll deductions, similar to a 401(k) plan.

The features of the new type of stock option include:

- Substantially all full-time U.S. employees would be eligible to participate
- The option price would be 100% of the fair market value at the time of grant
- Employees would participate by authorizing payroll deductions on a pre-tax basis
- The maximum annual amount of grant per employee would be \$11,000 (same as indexed 401(k) limit)
- The maximum option term would be five years, after which the employee could elect to buy the stock or take back the payroll deductions
- No tax to the employee at the time of grant or exercise, including AMT. At the time of sale, the employee would receive ordinary income equal to the lesser of the full fair market value ("FMV") at the time of exercise or the FMV at the time of sale. Any excess of the FMV at the time of sale over the FMV at the time of exercise would receive capital gains tax treatment
- The employer's tax deduction is equal to the FMV at the time of exercise, deductible at exercise. No further tax deduction at sale

The benefits of the new class of option, if adopted, would include pre-tax capital accumulation until sale for employees and tax deduction at exercise for employers.

This letter is intended to alert compensation professionals about developments that may affect their companies. General questions about the Workplace Stock Option Act of 2002 may be addressed to David Cole in our New York office at 212.986.6330 or by email at dmcole@fwcook.com. This letter and other published materials are available on our website, www.fwcook.com.

¹ This bill is an updated version of bills introduced in the 105th and 106th Congresses.