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Fulcrum Partners and BDO Report on IRC Section 162(m) Impact on Executive Compensation

PONTE VEDRA BEACH, FL -- (March 14, 2018) As individuals and organizations across the U.S. assess the impact of the federal government Tax Cuts and Jobs Act that went into effect on January 1, 2018, some are reaping the benefit of tax reductions, while other corporations and their executives are regrouping, making strategic adjustments to better position themselves in light of the tax code revisions. In many cases, corporations and the top talent they rely on, are finding that changes to Internal Revenue Code (IRC) Section 162(m) have inspired the need for thoughtful and calculated modifications to executive pay and executive benefit compensation plans.

Fulcrum Partners LLC, an independent member of the BDO Alliance USA, is an executive benefit advisory with more than $6 Billion in assets under management. In seeking to best serve corporations, nonprofit organizations impacted by the tax code changes and highly-compensated executives, Fulcrum Partners has published, "*Rethinking Executive Compensation While Awaiting Section 162(m) Guidance*." This detailed report has been prepared in collaboration with BDO USA, LLP, a national professional services firm providing assurance, tax and advisory services.

Under the new tax laws, the definition of "publicly held corporations" subject to Section 162(m) has been expanded; the group of covered employees in a given year has been enlarged; and exceptions to Section 162(m) for performance-based compensation and commissions have been repealed, thereby eliminating a company's option to deduct compensation in excess of $1 million paid to any covered employee during a year.

While further clarifications from the Internal Revenue Service are anticipated to address nuances and applications of the 162(m) tax code revisions, organizations are seeking insights and recommendations immediately, given that the new tax laws already are in effect, or will be coming into effect quickly as companies reach their fiscal year end.

“It will be interesting to see,” said Bruce Brownell, a founder and managing director at Fulcrum Partners, “if plan sponsors change the timing and form of incentive and performance compensation from, say, a multiyear term incentive plan which may not be deductible, to a retirement-based plan that offers a multiyear, deductible benefit. For example, a CEO would accumulate $10M in the ‘incentive/retirement’ account and at separation begin annual distributions of $1M each. Although you may not be able to preserve your past levels of deductibility, stakeholders would presumably appreciate preserving as much deductibility as possible.”

G. Scott Cahill, a founder and managing director, who also heads the company’s Orlando office, observed, “Given the reduction in the corporate income tax rate, the broader covered employee group, the elimination of performance-based compensation deductions and preserved deductions for grandfathered plans, companies need to model the costs of their executive compensation arrangements. Visualizing the results helps companies determine the appropriate total compensation strategy suitable for their financial and business objectives. Fulcrum Partners serves clients by guiding them through their options, helping them make the decisions that are best for the organization, their executives and their shareholders.”

You can view the report on the company’s website or download it as a PDF at: www.fulcrumpartnersllc.com/wp-content/uploads/2018/03/FULCRUM-

PARTNERS-BDO-162m.pdf. The whitepaper report was prepared by Bruce Brownell, CFP, Founder and Managing Director Fulcrum Partners; G. Scott Cahill, CLU, Founder and Managing Director Fulcrum Partners; Joan Vines, Managing Director, National Tax - Compensation and Benefits, BDO; Carl Toppin, Managing Director Compensation and Benefits, BDO; Andrew Gibson, Regional Managing Partner - Tax Services BDO; and Peter Klinger, Partner, Compensation & Benefits, BDO.

Fulcrum Partners LLC:

Fulcrum Partners LLC (www.fulcrumpartnersllc.com) is one of the nation's largest executive benefits consultancies. A wholly independent, member-owned firm, Fulcrum Partners is dedicated to helping organizations enhance their Total Rewards Strategy. Founded in 2007, today the company has offices in Atlanta, Georgia; Chicago, Illinois; Charleston, South Carolina; Columbus, Ohio; Delray Beach, Orlando and Ponte Vedra Beach, Florida; Honolulu, Hawaii; Houston, Texas; Los Angeles and Newport Beach, California; Portland, Oregon; and Washington D.C. Learn more about the Fulcrum Partners executive benefits advisory team at https://fulcrumpartnersllc.com/fulcrum-partners-team/.

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Effective for tax years beginning on or after January 1, 2018, the Tax Cuts and Jobs Act (the "Act") made significant changes to Section 162(m) of the Internal Revenue Code. The changes eliminate the ability for publicly held corporations (and certain large private C and S corporations) to deduct compensation in excess of $1 million paid to any of an increased number of executives in a given year.

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