



Executive Compensation in the Post Recession Period

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Timing

- Time to review, reflect, reinvigorate
- Compensation can drive performance
- Share prices at historic lows

Outlook

- Say on pay not likely to spread down
- Private equity views not likely to become relevant
- Accounting projects not relevant
- Tax legislation not imminent

Strategy

- Begin with the end in mind
- Find the value chain connection
- “To thine own self be true”

Caveats

- Balance long-term and short term components
- Consider mandatory holding period
- Remember “stock is cheaper than cash”
- Build in subjectivity

Begin with the end in mind

- Our likely exit opportunity
- Our best “strategic buyer”
- How will we be valued?
- What can drive that value?
- When will we be ready?

Restricted Stock better than Options

- Fewer valuation issues
- Can be expense neutral
- Mechanically simpler
- Resolves overhang more rapidly
- Shares can be withheld to pay taxes
- Has value even in a down market

Contingent Forward Purchase Contract

- Similar to an option – but not optional
- Mandatory on occurrence of liquidity event
- An ideal substitute for ISO
- Yields capital gains to employee
- Risk is - a forced buy at above market price

Change of Control Agreements

- Important to buyer's to preserve value
 - institutional memory
 - facilitate orderly transition
 - Prevents erosion of customer and employee base

Change of Control Agreements

- An alternative to long-term performance compensation
- ISS doesn't like – especially “single trigger”
- Private equity doesn't like
- Requires 409A non-qualified deferred compensation planning

409 Planning

- Applies to public companies and targets of public companies
- Limited to “specified individuals”
- Operates upon a termination of employment
- Requires a 6-month waiting period for any payout
- Difficult to fix

280G Planning

- Excess parachute payments not deductible and subject to 20% excise tax
- Three ways to address
 - Ignore
 - Cutback
 - Gross-up (ISS disapproves)

280G Planning

- Change of control payments exceed 2.99 times 5-year average W-2 income
- Equity award accelerations frequently cause an excess parachute payment
- Straddling a year end and prepaying can reduce or eliminate excess parachute
- Covenants not to compete
- Deal pay

Mutuals

- Begin with the end in mind
- Think about dedicating a percentage of capital growth to the plan
 - 5 to 10 %
- Divide the plan between current and deferred compensation 40/60
- Provide for performance-based vesting of the long-term account balance

Mutuals

- Limit participation to “leaders”
- Hire for attitude
- Founded upon profits
- Tied to business plan

Funding

- Annuities
- BOLI

Compensation Surveys

- Excellent public data – XBRL
- Scant non-public data
 - Expensive – with no pay back
 - Inherently biased
 - Sample sizes too small to be reliable
- Use public data with a “deflator” factor



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