

## Merger & Acquisition Considerations for the Equity Stock Plans

The economic turmoil of the last two years has created many market opportunities for mergers and acquisitions. This corporate event will affect the optionees, ESPP participants and shareholders. The stock plan administrators, managers, and corporate management need to be involved early in the process in order to ensure that the Stock Plan Dept. has the appropriate tools and are prepared to support the new business combination. Communication is an integral part of ensuring a smooth transition.

### The Terms of the Event

1. Become knowledgeable about the terms and conditions of the transaction. Read all the company's filings related to the event.
2. Read the Company's Equity Plans to identify what will occur in the event of a merger, an acquisition or a recapitalization. Understand the affect of the event on the Equity Plan participants. Typically the acquired company will experience either:
  - a. Cash out options and awards,
  - b. Cancel existing options/awards and grant new options under the new company,
  - c. Convert the existing options/awards.
3. What will happen to the current ESPP?
  - a. Typically a one-time short purchase period.
4. Request a meeting with Legal Counsel to review the terms of the event and any additional Board resolutions that were not part of the original plan terms.
  - a. The Board of Directors may identify and resolve on certain terms and conditions separate from the original plan terms.
5. Are any of the new terms and conditions adding additional benefit to the employees?

### The Equity Plans Software and Equity Plans Documentation

6. Will the company's current stock administration software handle the business combination?
  - a. What software is used by the acquired company?
  - b. How will the acquired company data be converted into the acquiring company's software database? (This is usually the most difficult piece of the event.)
7. For an acquired company, what documentation needs to be moved on-site and what can be archived?
8. Will the stock plan administration dept. require additional resources to:
  - a. Manage the transition
  - b. Maintain the new business combination awards?

### Legal and Transfer Agent Recordkeeping

9. Under Section 16 (a), when will Form 4 s be filed? For what transactions? Will Exit Form 4s be required?
10. Is there a black-out period established due to the event?
11. Ensure that your transfer agent is fully apprised of the impending transaction, so that they will be appropriately prepared and ramp up staffing requirements to handle the activity.
  - a. The Transfer Agent has lots of work to manage this event.

### Accounting

12. Are there any modifications to the original terms of the equity awards that grant a greater benefit to the employees? How will the business combination affect the company's FAS123R (now ASC 718) valuation models and assumptions?

### Employee Communications, International Employment Law

13. Are there employees in international jurisdictions? What are the employment laws? How will this be handled with regard to equity compensation?
14. Employees will likely have questions and concerns about the transaction. Email communications early and often are appreciated. Conduct information sessions as proactively as possible to address their concerns.

### FRS History and Services

Founded in 2000 by Marianne Brannock-Hill, CEP, CTP, FRS Equity Strategies is the full-service provider of choice for the full array of equity compensation services, from consulting and outsourcing to training. We take a team approach, applying just the right skills and expertise to deliver a solution tailored to meet your needs. This approach also adds an important level of internal accountability and auditing. Our goal is to provide services as seamlessly as though we were members of your internally staffed equity compensation team.

We provide the following services to both private and publicly-owned companies. We work with a wide range of organizations from start-up to Fortune 1000 companies. Our professional staff is comprised of individuals with advanced degrees and certifications in accounting, tax, law and business. We are SAS70 certified, ensuring that our processes meet the highest standards of security and confidentiality. For further details on all our services, please visit our website: [www.frsequitystrategies.com](http://www.frsequitystrategies.com), email us: [clientservices@equity-strategies.com](mailto:clientservices@equity-strategies.com), or call (408) 727-0227.

#### **Out-Sourcing**

- We provide a full-service management and administration service customized to the needs of your organization and your current processes.
- Our services cover all aspects of employee equity plan management, addressing up to 50% more corporate responsibilities than those handled by brokers, law firms, or other third-party vendors.
- Our team is highly experienced with a variety of equity plan management software suites including those from EASi, EMS, eProsper, E\*Trade, Equity Edge, Transcentive and more.

#### **Consulting**

- We offer services on a project-basis to provide you with a variety of assistance with the management of your employee equity plans.
- FAS 123(R) valuation and expense allocation reporting.
- Database integration related to mergers and acquisitions.
- Software implementation for new applications and transitions between applications.
- Audits of historical data and ongoing processes for compliance.
- Other special projects as needed.

#### **Training**

- Remote or onsite training services to maintain the technical expertise of your staff.
- Seminars and “boot-camps” on regulations, accounting, tax and compliance issues.
- Courses in the use of equity plan management software applications.
- CEP exam preparation sessions for levels 1, 2 & 3 of certification.