CHAPTER 1

Overview

Chapter Contents

§ 1.01 Introduction

Stock options have served as significant elements in corporate executive compensation programs throughout the era following the Second World War. From time to time during this period federal tax policies have promoted these options as compensation vehicles. Corporations find them attractive because employees may receive significant compensation from these options at no cost to the employer.

The reference to "executive" stock options in the title of this book and elsewhere in its text reflects the traditional practice of granting compensatory stock options only to limited groups of executives and managers. However, during the years following the initial publication of this work this practice has given way throughout the American economy to a more broadly based utilization of compensatory stock options,[1] and awards to substantially all of a company's employees are no longer unusual. Accommodating these awards and reflecting a federal public policy that favors them, the federal Wages and Hours law was amended to enable employers to avoid the cost of having to include the values of employee stock options in the basis for calculating the mandatory overtime pay rates of their wage-earning stock option recipients.[2]

The materials in the pages and chapters that follow are intended to demonstrate current practices regarding employee stock options and to assist corporate enterprises in the design and establishment of plans or programs for granting such options. The presentation of these materials may also serve to provide the employees who receive stock options and the stockholders who seek to evaluate them with a better understanding of the issues being discussed. The analysis will emphasize both the benefits and the detriments of the features under consideration.

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[1] The March 2010 National Compensation Survey published by the federal Bureau of Labor Statistics indicated that access to stock options was available to 8% of all workers employed by privately owned enterprises, and that the corresponding percentages were 15% for those in enterprises with 500 or more workers and even higher for workers at utilities (16%), in finance and insurance (22%), and at firms in the information businesses (36%). See http://www.bls.gov/ncs/ebs/benefits/2010/ownership/private/table25a.pdf (last visited Sept. 10, 2011).

[2] See § 6A.02 *infra*.

§ 1.02 Conflicts of Interest

As may be expected, these benefits and detriments will appear different according to whether they are regarded from the viewpoint of the employer/company or from that of the employee. Corporate managers who are charged with designing and implementing a compensatory stock option plan or program should clearly understand and appreciate both of these viewpoints and their points of friction, because they may be required to make decisions in conflict with their personal interests. Usually, these managers are among the employees for whom the stock option plan or program is being designed; and often, they include corporate directors who have ultimate responsibility for directing the affairs of the corporation and who will be held answerable to stockholders for their actions.

The compensatory stock option contains another element of conflict that should not be overlooked: As will be discussed in a later chapter,[1] although an employee's receipt of a stock option is at no cost to the enterprise, if the underlying stock appreciates in value over the option exercise price, the option will yield the desired economic benefit to the employee but it will also dilute the values of the stockholders' shares. Stockholders' share values are diluted by the option's impact on per-share earnings while it remains unexercised and, upon its exercise, by the sale of shares to the employee at less than then current market values. Consequently, managers should weigh the benefits of stock options to their recipients against the effects these options will have on stockholders as such, as well as against their effects on the employer/company as an enterprise.

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[1] See Chapter 4 *infra*.

§ 1.03 Employee Stock Options: General Concepts

[1]—Elements and Terminology of Stock Options

A stock option is the right to purchase shares of stock during a defined period of time at a price that is either specified in the option or calculable under a formula provided in the option. The person who grants the option is the *grantor* or *optionor*; the person to whom the option is granted is the *grantee* or *optionee*; the shares of stock which are the subject of the option are the *underlying* or *optioned* shares; the purchase of the optioned shares constitutes the *exercise* of the option; and the purchase price called for by the option is often also referred to as its *exercise price*. The exercise price may also be referred to as the option's *strike price*, although that term is more commonly used for market-traded stock options than for employee stock options.

Employee stock options usually may not be exercised immediately when they are granted but only on and after a specified later date, and typically the benefits to be derived from an employee stock option are spread over a period of time by dividing the option into several *installments*, each of which relates to a portion of the optioned shares and may be exercised only on and after a different specified date. A stock option or one of its installments is said to *vest* when all conditions to the right to exercise it have been satisfied and to *mature* on the date when it may first be exercised; these terms are usually interchangeable, but occasionally an option may vest before it has matured and is allowed to be exercised. Some refer to the installments as "*tranches*," a French term used in corporation finance to distinguish among portions of a corporate security that differ from each other in one or more of their terms, such as their interest rates or maturities.

[2]—Compensatory Stock Options Distinguished from Other Stock Options

As a contractual right to purchase shares, a stock option may be granted by any optionor to any optionee. It is not necessary that the optionor be the issuer of the underlying shares, nor even that the optionor own those shares when the option is granted. Common examples of stock options granted by persons who are neither the issuers nor necessarily the owners of the underlying shares are the standardized market-traded "call" options widely used as vehicles of investment and speculation.[1] These options are granted by an entity owned by the several national securities markets on which the options are traded, based on backup commitments issued or "written" by stock brokerage houses which are members of these markets or by their customers. The markets for such traded options also deal in "put" options, in which the grantor or "writer" is committed to purchase rather than sell the underlying stock at the specified strike price.

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[1] See Seligman, "The Structure of the Options Market," 10 J. Corp. L. 141 (1984). See also, Walker, *How the Options Markets Work* (1991).

Our focus in this volume, however, is on employee stock options. These options are always calls, that is, rights to purchase the underlying stock, not rights to sell it, and they are granted to the optionee for purposes of compensation, not speculation. The optionor is the employer of the optionee; it is usually the issuer of the underlying shares, but it may also be an affiliated entity, such as a subsidiary of that issuer. It is possible for an employer to grant compensatory options on stock of an unaffiliated corporation; however, that practice is so uncommon that the reader of this text may assume the stock options under discussion are on stock of the employer corporation or its affiliate unless the contrary is clearly indicated.

Also beyond the scope of this book are the stock options that serve as tactical devices in corporate mergers and acquisitions. For example, the stockholder rights or "poison pills" sometimes used to protect a company against hostile takeovers are essentially stock options that are granted to existing stockholders in order to dilute the interests of an unwelcome purchaser.[1.1] And stock options may be employed to "lock-up" a negotiated corporate acquisition by discouraging other suitors or to compensate the prospective acquiror if, notwithstanding its having put the target company "in play," it is subsequently outbid by another suitor.

[3]—Section 423 Stock Options

Compensatory stock options may also be designed to comply with Section 423 of the Internal Revenue Code. Section 423 options must be granted under a stock purchase plan for substantially all of the company's employees, with very specifically limited exceptions, on a basis that does not discriminate in favor of the more highly paid employees. Because of this requirement, Section 423 options play a much different role in an enterprise's compensation program from the traditional executive stock options granted to a limited group of employees, such as executives or officers or scientific, technical or managerial personnel, that were the focus of this volume when it was initially published. Section 423 stock purchase plans were therefore regarded as beyond the scope of this book.

However, since the initial publication of this work, it has become commonplace to award stock options and other forms of equity compensation to ever broader categories of employees. Stock option plans in which substantially all full-time employees participate, once favored by only a few entrepreneurially oriented companies, have been adopted by many enterprises, large and small, including seasoned companies in the financial services as well as the industrial sectors of the American economy. Do these developments invalidate the above-mentioned distinction between executive stock options and the more broadly based Section 423 stock purchase plans? Even though the distinction survives in most circumstances, the changing corporate environment may frequently require compensation administrators to

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[1.1] State laws that permit poison pill stock options are identified in § 2.01[4] *infra*.

consider these stock purchase plans as possible alternatives to the more traditional stock option plans. Therefore, this work now also includes a discussion of Section 423 stock purchase plans.[1.2]

[4]—Stock Option Plans

Employee stock options are usually granted pursuant to a “stock option plan,” which is a formal verbal expression of the terms and conditions and limitations of the employer corporation’s program for granting compensatory stock options.[2] This plan may be in the form of a resolution of the corporation’s board of directors, but more commonly it is expressed in a document whose provisions are adopted by a board resolution and approved by vote or consent of stockholders. Although a company’s stock options may thus be governed by an appropriately adopted stock option plan, each individual option is typically evidenced by a written instrument, often in the form of an agreement, delivered by the employer/optionor to the employee/optionee.[3]

[5]—Stock Option Agreements

Employee stock options may also be created outside of any stock option plan.[4] Thus, the option may originate entirely in an agreement between the corporation and the optionee, often as part of a more comprehensive contract of employment.

It is theoretically possible for stock options to be granted by oral agreement. If the term of the option’s duration is less than one year, the common statute of frauds provisions requiring written evidence of the agreement may not apply. Obviously, unwritten stock options are primarily encountered in litigated disputes between employers and employees; if a stock option is, in fact, to be granted, both optionor and optionee should insist on a detailed written description of its terms and conditions.

[6]—Directors’ Stock Options

Publicly owned corporations have also supplemented the compensation of their non-employee or “outside” directors with stock options. Such directors’ options raise additional issues under securities and corporations laws not encountered by the more conventional options for executive employees. These issues are therefore separately addressed in this work.[5]

[1.2] See § 3.07 *infra*.

[2] See Chapter 7 *infra*. For examples of stock option plans, see §§ 10.01 and 10.02 *infra*.

[3] See Chapter 8 *infra*. For an example of a stock option agreement, see § 10.04 *infra*.

[4] See § 8.01 *infra*.

[5] See Chapter 9 *infra*. For examples of stock option plans for non-employee directors, see § 10.03 *infra*.

§ 1.04 Stock Appreciation Rights

The essential value of any stock option lies in the potential appreciation in the value of the underlying stock above the option's exercise price. This value can also be captured in a stock appreciation right, frequently referred to as an SAR. That right, in essence, entitles its holder to a payment which equals the amount by which shares of stock have appreciated in market value from a specified starting level to the date on which the SAR is exercised.

As used in executive compensation practice, an SAR can accompany a stock option and give its holder the right to receive the same appreciation in market value of the optioned shares that makes the option so valuable, without the cash outlay involved in payment of the exercise price. So used, the SAR is said to be tandem to the stock option and will entitle the optionee, as an alternative to exercising the stock option and upon surrender of that option, to receive an amount equal to the excess of the market value of the optioned shares, on the date the SAR is exercised, over the exercise price of the surrendered stock option.

Because such tandem SARs are an important adjunct to the utilization of executive stock options and are frequently authorized under stock option plans, they will be discussed in this work. They differ in this respect from other forms of executive compensation which have no connection to stock options and are therefore beyond the scope of this work, such as bonuses, deferred compensation, phantom stock, performance units and performance shares, restricted stock, and various kinds of supplemental and other retirement benefits.

§ 1.05 Considerations Affecting Executive Stock Options and SARs from the Employee's Standpoint

[1]—The Place of Stock Options in the Compensation Package

The employee who receives a compensatory stock option or SAR will realize the anticipated benefits of the arrangement only if the market value of the underlying stock appreciates above the option exercise price. If and to the extent the employee expects his or her own efforts to influence the future course of that stock's market value, the option or SAR will serve to motivate those efforts. It is thus that executive options and SARs are thought of as forms of incentive compensation.

As a corollary, however, the employee should recognize that the market value of the stock is also influenced by extrinsic factors over which he or she has little or no control, macro-economic trends as well as other external factors affecting the enterprise and its industry. This recognition dictates a limit to the price the employee may be willing to pay for receiving the option or SAR. That price usually consists of accepting a reduced salary or the reduction or elimination of some other element of compensation, such as an incentive bonus or other benefits based on individual performance or some form of deferred compensation. The executive who is in a position to bargain effectively for his or her compensation package should insist on meaningful levels of remuneration and incentive benefits other than stock options or SARs. Conceptually, stock options or SARs might be regarded as supplemental benefits which are not intended to compensate the executive directly for the services he or she performed for the enterprise or its operations, but which reward the executive for the role these services may indirectly have played to bring about any enhancement in stockholder values that is realized during the executive's time on the job.

[2]—Impact of Tax and Securities Laws

To evaluate the stock option and the SAR, the executive must understand the differences between compensation in these forms and the receipt of cash bonuses. He or she must therefore be counseled as to the federal and state income tax implications of stock options and SARs. Not least among these implications is the possibility that taxes may be incurred at a time when the benefit being taxed may not have generated the funds with which to pay the taxes. The complexities of securities laws, federal and state, may impact the executive's exercise of a stock option or an SAR and the executive's ability to dispose of any shares of stock obtained on such exercise and thereby to realize the market value of those shares.[1]

[3]—Incentive Stock Options

When considering the impact of taxes on the executive's realization of values from stock options, it will become apparent that the kind of options which are singled out for special treatment under federal tax laws, the so-called "incentive stock options" (often referred to as ISOs), may afford the executive benefits not otherwise available.[2] The executive may postpone tax liability for the values derived from these options until the underlying stock is sold, instead of incurring it when the option is exercised, and may enjoy the more favorable treatment of long-term capital gains instead of ordinary income. These benefits are achieved at some cost to the executive; to enjoy them, the executive must accept certain restrictions, such as a minimum exercise price and limitations on exercisability after termination of employment, and the need to hold the underlying shares for a minimum period after the option is exercised, and he or she must consider the benefits derived from the option in the calculation of the executive's alternative minimum tax. In weighing these benefits and detriments of ISOs from the executive's standpoint, it should be recognized that from the employer's standpoint they are more disadvantageous than other kinds of compensatory options because the employer will not be permitted a tax deduction when the employee exercises an ISO.

[4]—Payment of the Option Exercise Price

The exercise price is the cost the optionee must pay to realize the benefits of the stock option. This cost may be reduced, and in fact eliminated, in several ways that should be considered in evaluating the option from the employee's standpoint.[3] This issue takes on particular importance if there is any impediment to the optionee's ability to sell the underlying shares and realize their market value promptly following the purchase of those shares on exercise of the option, whether such impediment arises from the absence of a public market for those shares, or the requirements of securities laws, or the impact of tax laws, or the policies of the employer.

The use of an SAR granted in tandem with the option will relieve the optionee from the burdens of paying the exercise price. Other relief from those burdens may be obtained if the optionee is permitted to pay that price by delivering

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[1] See: Chapter 3 *infra* for tax issues, Chapter 5 *infra* for securities law issues under state law, and Chapter 6 *infra* for securities law issues under federal law.

[2] See § 3.02 *infra*.

[3] See § 8.08 *infra*.

previously owned shares in lieu of cash; or by the "immaculate exercise" device under which the optionee delivers no payment at all upon exercise of the option while the number of shares delivered to the optionee is simply reduced by so many shares as have a value equal to the exercise price; or by the "brokered exercise" under which advance arrangements are made in connection with the exercise of the option with a stock broker who furnishes the funds for the exercise price from—or in anticipation of—the proceeds of a sale of some of the underlying shares for the optionee's account.[4]

[5]—Survival of Options

Finally, the executive must be made aware of the consequences various future events may have on the option or SAR. How would the benefit be affected by the executive's death or disability, by voluntary or involuntary terminations of the executive's employment, or by the employer corporation's reorganization or acquisition or other change in its control?[5]

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[4] *Ibid.*

[5] See Chapters 7 and 8 *infra*.

§ 1.06 Considerations Affecting Executive Stock Options and SARs from the Employer's Standpoint

[1]—Stock Options: Compensation Without Cost

As already mentioned, the most profound difference for the employer between a stock option and most other forms of executive compensation is the simple fact that the enterprise itself does not pay for benefits realized by the executive from a stock option. The stockholders pay for these benefits by suffering some dilution in equity values, but the cash or other properties of the enterprise itself are not consumed as they are by the payment of other types of compensation, such as salaries, cash bonuses, or other awards of cash or property for services rendered. Only stock bonuses share this characteristic with stock options.

This "cost-free" nature of executive stock options explains their particular appeal to start-up enterprises with limited cash resources. This appeal is especially important for certain companies, such as those proposing to engage in high technology activities, for which the compensation of high-priced technicians and professionals is a significant element of cost. Stock options have been widely used to attract such personnel, promising them high rewards if the enterprise succeeds, without adverse cash impact.

Notwithstanding the lack of an adverse impact of stock options on the employer's cash, corporate managers must recognize that a compensatory stock option plan or program will impose certain costs on the enterprise. A price must be paid for the benefits this plan or program may confer upon the participating executives. In addition to the potential dilution of stockholders' equity—a price that the corporate manager would disregard at his peril—the manager must take into account the possibility that stock market values will decline, depriving the executives who are to be compensated by the plan or program of their anticipated benefits and thereby demoralizing them; and must assess the costs of the accounting, tax and securities law consequences discussed below. These considerations must be taken into account to evaluate a stock option plan or program against the costs and benefits of alternative incentive compensation arrangements.

[2]—Accounting Issues

The accounting treatment heretofore afforded most employee stock options has reflected the unique feature of these options, the absence of cost to the enterprise. Neither the grant nor the exercise of stock options has impacted the enterprise's statement of income. In 1993 the Financial Accounting Standards Board proposed to change this accounting treatment and require valuing these options and recording their value as an expense in the statement of income. After extraordinary controversy the proposed change was modified to permit footnote disclosure of the impact of these options as an alternative to recording them as an expense, but that alternative has been eliminated and recognizing the value of stock options as an expense is no longer optional, but mandatory.[1] Corporate managers must carefully consider these accounting developments in evaluating the use of stock options in executive compensation programs, as well as the use of SARs and other alternatives.

[3]—Tax Treatment

Tax treatment of stock options and SARs must also be considered on behalf of the employer.[2] To what extent will these options and SARs result in deductible compensation expenses, and when will any deductions become available? Is there an obligation to withhold portions of the employee's compensation for taxes on these compensatory awards; and, if so, how can any required withholding be effected when the benefits for which the employee is taxed are not paid by the employer but realized in stock market transactions?

[4]—Impact of Securities Laws

Issues arising under securities laws must also be evaluated,[3] particularly since any necessary proceedings to register or qualify optioned shares under these securities laws may represent additional costs to the enterprise that would not be encountered if the compensation were in the form of cash or other property that does not constitute corporate securities. These additional costs under securities laws are not only the out-of-pocket expenses incurred, but also possibly significant exposures to liabilities under these laws.

[5]—Stock Appreciation Rights

A previous major disadvantage of SARs compared with stock options from the standpoint of the employer enterprise was removed when the 2004 revisions of the applicable accounting rules eliminated the ability of employers to avoid recording any expense for compensatory awards in the form of stock options rather than SARs.[4] However, SARs that are to be settled in cash rather than stock may have to be accounted for as liabilities while they are outstanding and will obviously affect the company's cash flow upon their exercise.

[6]—Effects on Long-Range Planning

In addition to the technical tax, accounting and securities laws issues that must be addressed in developing an executive compensation program that makes use of stock, the employer must consider the long-range effects of that program. These effects will be felt in the employer's compensation policies as well as in the corporate plans of the enterprise.

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[1] See § 4.01 *infra*.
[2] See Chapter 3 *infra*.
[3] See Chapters 5 and 6 *infra*.
[4] See § 4.01 *infra*.

[a]—Compensation Policies

In deciding to adopt a stock option plan or to grant individual stock options to its employees the employer may be setting a precedent that will influence the role that such equity compensation devices will play in the future. This role may be altered as future conditions dictate, but so long as the enterprise continues in its present form—as a privately owned company, or as a publicly owned company engaged in its existing business or group of businesses—it is likely that the nature and composition of elements in its executive compensation packages should remain essentially consistent for the sake of employee morale. Therefore, the institution of a program involving stock options or SARs should be regarded as reflective of a basic policy concerning the elements of executive compensation. Management may find it difficult to change that policy later.[5]

The terms of stock options or SARs granted will also express other fundamental compensation policies. Should these benefits survive the optionee's death or disability, and, if so, for how long? Should options or SARs be granted to executives who are approaching retirement? If they are, will they remain exercisable after the optionee's retirement, and, if so, for how long?

[b]—Corporate Policies

The detailed provisions of a stock option plan or stock option agreement[6] may reflect current corporate policies but can also interfere with future developments affecting the enterprise.

For example, stock options which are written so they must survive if the company is acquired by another entity will effectively prevent its acquisition by an entity which does not utilize employee stock options as a matter of policy, whether or not that acquisition might otherwise be desirable in the estimation of the board of directors or the stockholders. On the other hand, stock options which will terminate by their terms in connection with any such acquisition may prove unacceptable to the employees for whose compensation they are designed. This quandary is frequently resolved by providing that if the stock option is not to survive a future acquisition, its benefits must be accelerated so that the optionee can reap those benefits in advance of that acquisition.

Stock options are often designed with acceleration and other provisions that preserve the optionee's benefits in the event of a "change in control." In most cases, these provisions are intended to reassure the employees that their compensatory expectations will not be jeopardized by a corporate takeover. Such reassurance will presumably enable the company to enlist the cooperation of its executives in working out the terms of a desired sale of the company. In some cases, particularly during the takeover era of the 1980s, these "change in control" provisions were also regarded as some protection against hostile takeovers, a type of "shark repellent" that would tend to discourage

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[5] An example of the complexity of changing a company's basic compensation policies and practices is discussed in § 6.07[2] *infra*.

[6] See Chapters 7 and 8 *infra*, particularly §§ 8.04[2] and 8.06.

acquirors who planned to strip the company of its assets and terminate its executives at minimum cost. In addition to the corporate policies that are brought into play when "change in control" provisions are designed, the federal tax consequences of "golden parachute" provisions must be considered.[7]

Even without regard to possible future takeovers, friendly or hostile, the adoption of a stock option plan or program will engage some fundamental corporate issues. Some companies have strong policies concerning registration of securities under the federal Securities Act. Is the company willing to register securities for issuance to employees, as the adoption of a stock option plan may require, or should the burdens and exposures of federal registration be accepted only in connection with primary financing transactions in which the securities are sold to raise corporate funds, not to furnish compensation to employees?

Is there a limitation to the amount of dilution of stockholder interests that the company is willing to permit in connection with its compensation programs? The extent of such dilution is affected by both the exercise price of options granted and the duration of those options. The minimum permissible exercise price is usually expressed simply with reference to the market value of the optioned shares on the date the option is granted, but if limiting stockholder dilution is a concern the plan or option could require that exercise price to rise during the life of the option so that the "spread" by which current market value exceeds the exercise price is never more than some predetermined amount or ratio.

Finally, the managers of companies whose stock is publicly traded must accept significant disclosure obligations under the federal proxy rules with respect to executive compensation programs, such as stock options and SARs. These disclosure obligations include expressing the reasoning that led to specific compensation awards to certain key executives and the objectives sought to be achieved by those awards.[8] If a stock option or SAR plan would lead to required disclosures with which the management is uncomfortable, that concern should be addressed when the adoption of that plan is under consideration. Although executive stock options play an important role in compensating and motivating key employees, they are often unpopular with stockholders, especially when stock market values are declining or dividend payouts are perceived as inadequate,[9] and modern corporate managers may need to remain sensitive to these views.

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[7] See § 3.06 *infra.*
[8] See § 6.02 *infra.* For examples, see Chapter 12 *infra.*
[9] See Chapter 13 *infra.*

§ 1.07 Stock Option Consequences of Stock Market Price Declines

Because the exercise prices of compensatory stock options are customarily based on the market prices of the optioned stock on the dates the options were granted, subsequent declines in those market prices may affect attainment of the compensatory objectives of outstanding options. If the market values of the optioned stock fall to levels below the exercise prices of unexercised stock options, the options are rendered "underwater" or "out-of-the-money" and their function as incentive compensation will survive only if the employees can reasonably expect market prices to appreciate to levels above those option exercise prices before their options expire. Such a stock market price decline might affect only a specific troubled company or industry, or it might be part of a cyclical recession that makes an impact on economic activities throughout the economy.

Most outstanding stock options are rendered out-of-the-money and lose their value as incentives when such recessions occur. Since compensatory stock options have become used broadly and not only for executives, during a recession many or most companies need to consider reducing the exercise prices of those options ("repricing" them) or offering other compensatory awards or cash payments in exchange for them. In crafting responses to these circumstances, corporate managers must take the following matters into account:

(1) The provisions of the stock option plans that govern the outstanding options.[1]

(2) The requirements of applicable state laws.[2]

(3) The requirements of any stock exchanges on which the company's stock is listed.[3]

(4) The concerns of stockholders, including institutional investors, about repricing out-of-the-money stock options.[4]

(5) Accounting issues.[5]

(6) Tax issues.[6]

(7) Disclosure requirements of federal securities laws regarding stock option repricing arrangements.[7]

(8) The feasibility of offering to pay cash or to issue other compensatory awards in exchange for the outstanding options. One such award might be restricted stock, shares that are initially non-transferable and subject to forfeiture upon a termination of their recipient's employment, but will ultimately take on the characteristics and values of the company's unrestricted and transferable stock in the hands of a recipient who

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[1] See § 2.08[1] *infra*.
[2] See § 2.08[2] *infra*.
[3] See § 6.04[2] *infra*.
[4] See § 13.01[3] *infra*.
[5] See § 4.01[2][a][v] *infra*.
[6] See, e.g., §§ 3.01[2][a][iv], 3.02[3][e][ii], 3.02[5], and 3.05[2][b][ii] *infra*.
[7] See § 6.02[3][d] and [f] *infra*.

has continued to be an employee of the company until those restrictive features expire.[8]

(9) Regulatory requirements under federal securities laws affecting certain types of transactions by which outstanding stock options may be repriced or bought out.[9]

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[8] See § 3.04 *infra* regarding the federal tax treatment of restricted stock. For a more extensive discussion of the use of restricted stock as executive compensation, see Sirkin and Cagney, *Executive Compensation* § 5.04 (Law Journal Press, rev. ed. 2011).

[9] See § 6.07[1] and [2] *infra*.