

Key takeaways

Fitting Puzzle Pieces: Compensation Issues in Mergers and Acquisitions

At our Comp Talks session on November 5, 2025, “Fitting Puzzle Pieces: Compensation Issues in Mergers and Acquisitions,” Cooley attorneys Ali Murata, Rama Padmanabhan and Michael Bergmann discussed trends and issues in recent deal activity, as well as equity incentive award share usage, golden parachute excise taxes, and compensation disclosures in the context of mergers and acquisitions. Below are some key takeaways summarized by Cooley associate Mark Cornillez-Ty.

Market activity has been resilient in the face of uncertain conditions. Despite the uncertainty introduced by tariffs, geopolitical activity and the government shutdown, M&A activity remained strong in 2025, driven by the pursuit of strategic growth and the desire to acquire highly prized assets (such as artificial intelligence). With a lot of dry powder at their disposal, private equity sponsors are becoming more active. Market conditions have also encouraged activist investors to increase their involvement. Companies have looked to creative structures to adapt to these conditions and transact.

Acquirers need to manage transaction-related share usage to avoid prematurely depleting their equity plan share reserve. A target company’s equity awards can be converted into acquirer equity awards, new awards can be granted through inducement awards or the assumption of the target company’s unused equity plan share reserve, or a new shareholder-approved equity plan could be a preferable alternative depending on the particular circumstances. However, a complex play of document provisions, securities regulation, listing rules, incentivization needs and optics apply, all of which must be carefully navigated.

Compensation may not be one of the first issues discussed by the parties, but it should not be put on the back burner for too long, as it can be a significant economic component of the transaction. Deal-level discussions may be greatly influenced by the terms of the target company’s existing compensation arrangements, and so it is important to develop a thorough understanding of those terms in advance. Discussions should also consider the retention and incentive goals whose attainment is needed to preserve transaction value and how the cost of that compensation will be allocated between the parties.

Target companies should consider strategies to mitigate adverse tax consequences under Section 280G of the Internal Revenue Code. The Section 280G “golden parachute” rules generally apply to payments made in connection with a change in control of a corporation, with the result that if these payments exceed a certain threshold, the individual recipient is subject to a 20%

excise tax and the paying corporation loses the related deduction. Possible mitigation methods include establishing certain amounts as exempted reasonable compensation for services, accelerating compensation if closing will occur in a later year, and, for private target companies, submitting the payments to a “cleansing” shareholder vote.

Companies should be mindful of the compensation disclosures that will need to be provided in connection with a transaction. Companies may be required to disclose the interests of directors and executive officers in the transaction, treatment of equity awards, go-forward arrangements with named executive officers and other potentially sensitive information. In some cases, the company may need to solicit a shareholder vote approving any compensation arrangements with a named executive officer that relate to the transaction. Strategizing and carefully considering what must be disclosed and how to best communicate it in filings can help minimize stakeholder concerns and mitigate risk.

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