Cooley

Comp Talks

Key Takeaways:

Executive "Mega Grants" (Large, One-Time, Multiyear Equity Awards)

At the Comp Talks session on August 25, 2021, **Executive "Mega Grants" (Large, One-Time, Multiyear Equity Awards)**, our panelists – Cooley partners Alessandra Murata, Courtney M.W. Tygesson, and Amy Wood – discussed the nuts and bolts of mega grants including disclosure and stockholder-related considerations as well as best practices for implementing these incentives. Here are some of the key takeaways summarized by Cooley lawyer Vince Flynn:

Mega grants are large awards designed to reward equally outsized performance achievements and/or to replace several years of equity (or all incentive) compensation. These grants are often awarded upon hiring or promoting a new chief executive officer, in connection with the renewal of a CEO's employment agreement, as part of a strategic transformation of the company's business model or to rally a leadership team around a specific "moonshot" goal.

Mega grants are not for everyone. The panelists stressed the importance of first determining whether a mega grant is an appropriate tool and incentive for the company, which involves carefully assessing the company's long-term business strategy, the board's ability to set rigorous yet realistic long-term goals that can be communicated effectively to shareholders, and the company's relationship with shareholders. Additionally, not all executives will find the high-risk aspect of mega grants attractive, particularly when mega grants replace several years of other equity (or all incentive) compensation.

The size of these grants amplifies the need for thoughtful design. Larger awards trigger greater scrutiny from proxy advisory firms and shareholders and create greater potential for unintended consequences. Key design considerations include award type, award size, performance metrics, other vesting criteria, risk-mitigating provisions (e.g., holding periods and claw back policies), treatment upon termination and/or a change in control, tax withholding methods, accounting consequences and contingency plans if performance goals are not met or are met significantly sooner than expected.

Process is critical. Failure to follow a proper process could result in potential litigation claims. Board members must avail themselves of all material information reasonably available to them in order to make an informed and deliberate decision regarding these awards. Generally, this requires regularly engaging compensation consultants, legal counsel and other advisors throughout the decision-making process. The panelists also suggested that companies may want to consider seeking shareholder approval of mega grants, even when sufficient shares remain available for issuance under the company's shareholder-approved equity incentive plan.

Going beyond required disclosure is often recommended. The panelists stressed the importance of disclosure painting a clear and compelling story regarding why and how the award was made, with particular focus on the rigor of the performance goals, alignment with shareholders' interests, the board's process and any shareholder feedback received throughout the decision-making process.

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