

## FOLEY EXECUTIVE BRIEFING SERIES



# COMPENSATING AND RETAINING KEY PERSONNEL

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## FOLEY EXECUTIVE BRIEFING SERIES

### Today's Topics

- What incentives can or should be included in a compensation plan?
- What are the pros and cons of different incentives and strategies?
- What tax benefits are available for both executives and their employers?
- What impact does the employer's legal structure have on the types of executive compensation plans available?
- How has Section 409A changed the landscape, and what can be done to mitigate its impact?
- What are recent market trends in compensation and reward systems?
- What pitfalls should be avoided?



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## Types of Incentives

- Cash
  - Base Salary
  - Bonuses (Performance; Change of Control)
  - Severance
- Equity
  - Options (Incentive and Non-Qualified)
  - Restricted Stock
  - Phantom Stock / Incentive Units
- Benefits
- Pensions
  - Qualified Plans
  - Nonqualified Plans

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## Tax Treatment to Employer and Employee

- Cash
  - Salary
  - Bonus
  - Severance
- Equity
  - Options (Incentive and Non-Qualified)
  - Restricted Stock
  - Phantom Stock / Incentive Units
- Benefits
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## Structure and Strategy

- Aligning Objectives (Startup, Growth, Exit)
  - Maximizing Valuation
  - Increased Retention
  - Decreased Risk of Breach of Confidentiality
- Impact of Choice of Entity
  - Impact on ISOs
  - Impact of S status
  - LLCs and Profits Interests
- 280G Consequences on Exits



## Impact of 409A

- General Application
- Consequences
- Meeting the Standard
- Options and Valuation
- Severance



## Market Trends

- Equity Allocations
- Vesting
- “Double-Triggers”
- Increased Use of Restricted Stock
- Pervasive Impact of 409A



## Pitfalls

- Blown Valuations
- Blown 83(b) Elections
- 409A Noncompliant Plans
- Limitations of Profits Interests
- Impact of Phantom Stock Plans on Cashflow
- Contracts No Buyer Will Take



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