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Mpowerment Quarterly

News & Issues of Interest to Equity Compensation Professionals

May, 2009 - Issue 2

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Factoid

The San Jose Mercury News reports that in 2008, the number of public companies in Silicon Valley fell for the eighth consecutive year to 261.

At the dot-com peak in 2000, there were 417.

It's now below 315, the number the valley had in 1994, when the newspaper started the survey.

Welcome to Our Second Issue

Welcome to the second issue of Mpowerment, Mission Mpower's quarterly newsletter.



These are perilous times in the financial sector so it is important you have as much information as possible. Stock plans face many issues. Our unique perspective presents issues that face the corporate administrator and provides articles of interest to the participant. You spend a considerable amount on equity compensation and we are committed to providing you with the best value for your dollar. To bring you the most up to date information available, we collaborated with myStockOptions.com, a leader in equity compensation education.

E-mail us your questions and comments as well as suggestions for articles in upcoming issues. Our growth depends on your satisfaction.

Broken Links



Occasionally, there is an issue with one of the hyperlinks in the newsletter. If you're having trouble accessing an article and would like the information it contains, please send us an [e-mail](#) telling us which article you wish to read and we'll be happy to forward you the full content of the web site.

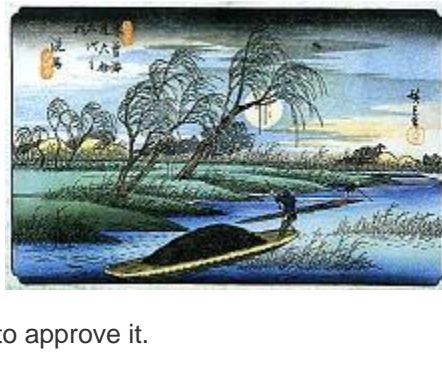
Tax Changes Ahead Under President Obama

Beyond short-term efforts to stimulate the economy, what are President Barack Obama's tax policies for the longer term? During his election campaign, he said he wants to make the income tax cuts of 2001 and 2003 permanent except for people with annual income over \$250,000, who will almost certainly see a tax hike after the economy has improved:

- The top two rates of individual income tax (now 33% and 35%) are expected to return to the pre-2001 rates of 36% and 39.6%.
- The top rate of tax on capital gains and dividends (now 15%) is expected to return to 20%, though a lower rate may apply to investments in startup companies.

Under his budget proposal, these tax increases are likely to occur after the current tax law expires at the end of 2010. To see how the changes affect stock plans and financial planning for stock compensation, read a new article on myStockOptions.com, [How Tax Rate Changes Impact Strategies For Stock Options & Restricted Stock](#).

How Option Exchanges Work



In the last issue, we discussed the various approaches to underwater stock options that companies are taking in the current market downturn. These include option exchanges, an alternative to repricing. Under an exchange program, which needs to follow the SEC rules on tender offers, a company may give its employees, on a strictly voluntary basis, the ability to cancel their old options and exchange them for fewer options at a lower exercise price. Note that often the CEO, other senior officers, and the directors are excluded from an options exchange program, especially if shareholders must vote

to approve it.

Most companies set an exchange ratio of underwater options for new ones at the current market price so that the total value of the new options is equal to that of the previous options (i.e., an equivalent value, not a one-for-one exchange). Alternatively, the term "option exchange" has been expanded to include the practice of replacing the options with a grant of restricted stock that has similar value. For example, Marvell Technology allowed employees with an exercise price of \$12 or higher (stock price trading in the \$6-\$7 range) to exchange these options for a pro-rated number of RSUs by a deadline.

An exchange will have various features, including:

- what options are exchanged for, and the ratio
- the exercise price and the employees eligible to participate
- vesting changes

Radford Surveys + Consulting found, as of March 2009, that the most common treatments involve exchanging options for options (49% of companies) and exchanging options for stock (34%). Only 14% of the studied programs exchange options for cash, though this figure has grown significantly from the 5% that Radford found in August 2008.

The interesting findings in the white paper include the following.

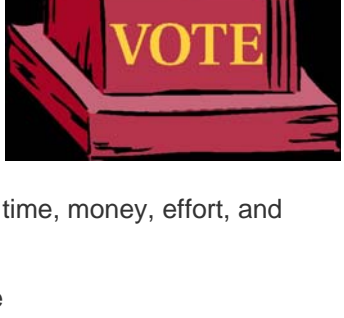
- In most cases, the minimum (i.e., least underwater) exercise price that grants must have to be eligible for the exchange is 1.2 to 2.5 times the current stock price, with an average of 2.1.
- Though one exchange ratio is most commonly offered, some companies do have tiered ratios based on the range of exercise prices.
- The new grant often resets vesting in some way instead of merely transferring it to the new grant (this is the case at 53% of companies that exchange options for options, and at 51% of companies exchanging options for stock).

This alternative to straight one-for-one repricing restores the value of stock options to motivate and retain employees without adding to dilution in the number of outstanding shares. While this approach can still cause your company an accounting charge for any increase in the incremental value of the new shares, the number of underlying shares is reduced to lessen the dilution. Under FAS 123(R), your company no longer needs to have a six-month hiatus between the surrender of old options and the grant of new ones to avoid variable accounting.

For more details on option exchanges, see the full [FAQ](#) on [myStockOptions.com](#)

Option Exchange Participant Elections - Introducing ballot|central

Mission Mpower is pleased to announce its newest offering, **ballot|central**. Working with our online voting service provider, **BigPulse.com**, we are able to bring you the most secure and experienced solution currently available for capturing your plan participant elections.



Your needs are built-in

- **ballot|central** supports your option re-pricing initiative with the most secure, flexible and affordable election solution available
- High Security Scalable for any number of participants. Save time, money, effort, and paper
- Multiple Mode Voting Online, paper, and hybrid elections
- Vote of Confidence Eight years of online election experience
- Web-Based and Fully Hosted
- Flexible, Integrated, and Feature Rich

Participant benefits include:

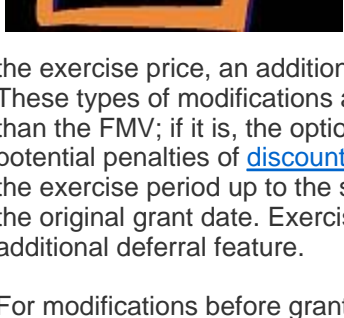
- Secure e-mail or ID & password access to the election site
- 24x7 website availability
- E-mail & Printable election receipts upon completion
- Paper Elections available for those lacking an e-mail address
- Reminders, via e-mail, that the election period is closing
- On-Line Documentation Repository for all-important information
- Easy Ask Feature enables participants to ask questions over a secure e-mail link

Sponsor benefits include:

- Easy Setup Just a spreadsheet is all you need to load the system
- Real-Time Reporting view results online or download to spreadsheets
- Grant or Plan level election support
- On-Line Document Repository Upload plan documents, graphics, etc. for easy participant access. You save printing and mailing costs
- Question Management allows sponsor to manage participant questions yielding timely response

For more information on **ballot|central** or any of our other equity compensation products and services, please e-mail us at sales@missionmpower.com, call us at 973.313.0012 or visit us on the Web at www.missionmpower.com.

Modifying Option & SAR Grants: The Tax Impact



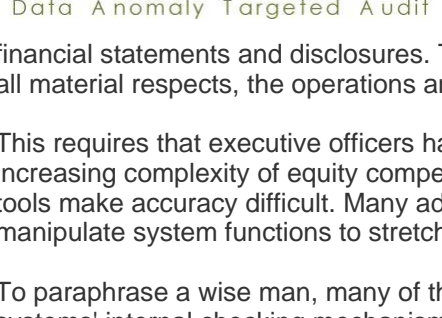
With approval from the board, and perhaps also shareholders, your company can modify outstanding grants in a way that is consistent with its stock plan. It should avoid tax pitfalls for employees and the company, such as those under the [deferred compensation provisions \(IRC Section 409A\) of the American Jobs Creation Act \(AJCA\)](#).

The proposed 409A regulations of the AJCA lay out rules for modifications and extensions of previously granted stock options and stock appreciation rights (SARs). A "modification" is a change in the terms that gives employees a direct or indirect reduction in the exercise price, an additional deferral feature, or an extension or renewal of the stock grant. These types of modifications are considered new grants, and the exercise price must not be less than the FMV; if it is, the options or SARs become subject to the rules of Section 409A and the potential penalties of [discounted stock options](#). The final AJCA regulations allow extensions of the exercise period up to the shorter of either (1) the original maximum term or (2) 10 years from the original grant date. Exercise extensions for underwater stock options are not considered an additional deferral feature.

For modifications before grants have expired, such as changes to address [underwater stock options](#), your company's accounting treatment under FAS 123(R) is less costly than it used to be. In short, your company would compare the fair value of the grant just before modification (not the original grant value) to the fair value after modification. The incremental excess cost is immediately expensed.

For more details on this topic, see the full [FAQ on myStockOptions.com](#).

Cleanliness is Next to Sarboxiness by Dan Walter



It seems like Sarbanes-Oxley has been with us forever, yet companies still commonly find data anomalies when they upgrade their equity compensation software or change providers. Section 302 of the Sarbanes-Oxley Act of 2002, "Corporate Responsibility for Financial Reports," requires CEOs and CFOs of publicly traded companies to certify the appropriateness of their financial statements and the disclosures. They must also certify that these reports "fairly present", in all material respects, and operations and financial conditions of their companies.

This requires that executive officers have confidence in the data underlying their reports. But the increasing complexity of equity compensation and the limitations of legacy stock administration tools make accuracy difficult. Many administrators use spreadsheet-based "work-arounds" or manipulate system functions to stretch their capabilities.

To paraphrase a wise man, many of these older systems "don't know what they don't know." The systems' internal checking mechanisms often miss erroneously created items or data that were entered incorrectly. In addition, equity compensation professionals are required to know more and do more than ever before. All of this strains data quality and puts the company and executives at risk of providing inaccurate reports. It is essential that your data be reviewed regularly by experts who understand equity compensation.

It takes a multi-pronged approach to find and correct data problems.

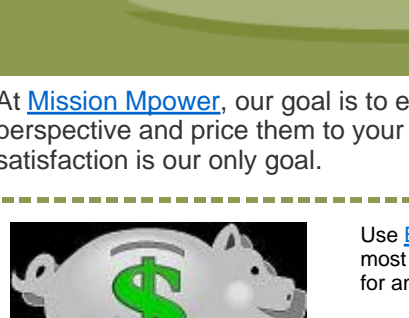
- The Data Audit-This should be a systematic approach to reviewing data and providing a report on possible issues.
- The Correction Strategy-Each potential issue must be reviewed for materiality, immediacy, and complexity. A plan for correction or explanation must be created and put into place.
- Data Cleanup-Correct, explain, or notate each issue for future reference.
- Ongoing Maintenance-Audit and clean up data on a regular schedule.

Are you, your CFO, and your CEO certain that your data are clean? Does your system show exercise dates corresponding to corresponding grant dates? Do your grant matches match the actual stock prices on the data of grant? Are expenses properly recorded and accounted for?

Performensation Consulting and Solutions offers its new Data Anomaly Targeted Audit ("DATA") service to ensure CFOs and CEOs have complete confidence when signing off on equity compensation data. Using a combination of cutting edge technology and the most experienced equity compensation professionals anywhere, Performensation can offer your company the most accurate DATA review possible.

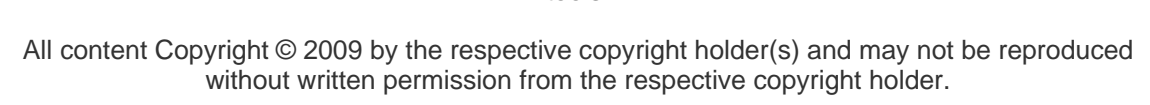
Take the time to review your data every quarter end. If you would like more information regarding Performensation's DATA Service, you can contact us at (917) 734-4649, via [e-mail](#) or visit our Web site at www.performensation.com.

Making Work Pay Credit: Possible Snag With Stock Grant Income

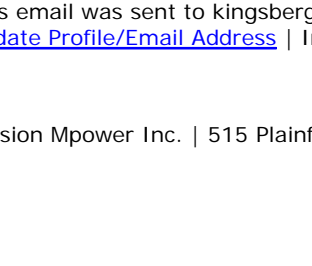


Available in 2009 and 2010, the Making Work Pay Credit was included in the American Recovery & Reinvestment Act, enacted in February. For most taxpayers, it amounts to \$400 per year. Unusually for a temporary tax break, the credit is being deployed to eligible people via the tax-withholding system that employers (or their payroll companies) apply to the wages of employees, who will receive the credit in higher take-home pay. No checks will be sent by the government, as was the case with the tax rebate of 2008.

However, note that the credit is an income phaseout which the company may not consider if it is unaware of income from other sources that push the employee above the phaseout threshold. Unfortunately, this means that some people, including those with a big enough spike of income from stock compensation, may end up paying taxes on the credit with their tax returns unless they adjust their salary withholding. For details on this, see the related [FAQ on myStockOptions.com](#).



At [Mission Mpower](#), our goal is to empower your business. We develop our solutions from your perspective and price them to your needs. We use straight talk and clear answers. Your satisfaction is our only goal.



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