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"Termination: Working Through the Consequences"

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Audio Archive

Course Materials

The timing of when an executive officer becomes entitled to severance benefits can impact accounting, SEC disclosures, taxes, say-on-pay and shareholder relations. Join these experts:

- **J. T. Ho**, Senior Associate, Orrick, Herrington & Sutcliffe LLP
- **Jon Ocker**, Partner, Pillsbury Winthrop Shaw Pittman LLP
- **Josh Schaeffer**, Director, Valuation Practice Leader, Equity Methods
- **Rob Zivnuska**, Managing Director, PJT Camberview

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Liz Dunshee, *Editor, CompensationStandards.com*: Hi, this is Liz Dunshee, Editor of CompensationStandards.com. Welcome to today's program, "Termination: Working Through the Consequences."

There are course materials posted through the link at the top of this page, which you should pull up or print so you can follow along with the case study today.

I want to welcome our panelists and thank them for participating today. We have J. T. Ho, a Senior Associate at Orrick; Jonathan Ocker, a partner at Pillsbury; Josh Schaeffer, Director & Valuation Practice Leader at Equity Methods, which is a consulting firm that helps companies with the design, valuation and accounting for equity compensation and other equity securities; and Rob Zivnuska, Managing Director at PJT Camberview, where he advises public companies on how to succeed with their investors in complex and contested shareholder matters. I'll turn it over to J. T. to kick things off.

Think Ahead When Timing Executive Terminations

J. T. Ho, *Senior Associate, Orrick*: Thanks, Liz. I For the folks on the call, I want to provide an overview of what we are going to cover today.

Our presentation is on how the timing of when an executive officer of a public company terminates his or her employment can impact when his or her equity awards are deemed to be modified, which can have important accounting consequences. The timing of an executive officer's termination can also impact when cash severance is deemed to be paid and accrued. All that as we will demonstrate, can impact a company's proxy disclosure and reporting obligations, taxes, say-on-pay vote and investor relations. Management should be aware of these things and should bring them to the attention of the compensation committee in advance of making any termination decision.

I am going to turn to Josh now who is going to go through a case study illustrating how all these things connect.

Case Study Facts

Josh Schaeffer, *Director & Valuation Practice Leader, Equity Methods*: Thanks, J. T.

We want to walk through a case study because that really is more helpful than talking about these concepts in a theoretical way. We're going to build the case of our "man of the hour" – or I guess our "man of the 45 minutes" – Alex Anders.

Alex is going to be terminated in this case without "cause." He is the CMO for a company, Alpha Corp, which is a year-end filer. Now there is a lot of information here, so you can follow along in the course materials – this is spelled out on page 3.

Jon Ocker, *Partner, Pillsbury*: Josh, how big is Alpha Corp?

Schaeffer: Alpha Corp is a mid-size S&P 500 company (a large accelerated filer). As we go, we will discuss what may change if the situation is tweaked. While the case study is our core focus for discussion, we will certainly want to talk about how changing some of the terms might impact the results.

Alpha Corp has a wide variety of equity compensation it grants. Alex has unvested restrictive stock units, both time vested and those vesting on performance conditions. Some of those vest based on TSR (or those familiar with accounting might know that as a "market condition"), and some vest on EPS (or a "performance condition"). Those are all outstanding at the time of Alex's separation. Additionally, Alex has a series of both unvested and vested options. All in all, it is the kitchen sink of equity compensation.

Ocker: Josh, there's no contractual right to severance for any of these things, right? No contractual rights to acceleration in the event of a termination or anything like that?

Schaeffer : Exactly. For this case study, once Alex is terminated, regardless of whether it's with or without cause, he would have to exercise all vested options within 30 days (this is generally the case whether the termination is with or without cause). Everything unvested the day of his separation from service would cease vesting immediately.

Now Alpha Corp wants to make Alex whole, given this situation, and they're doing that by giving him some cash, paying 18 months of severance and COBRA, and an additional bonus. Alex will also still be eligible for his fiscal year 2019 annual bonus.

In addition, they're going to modify the equity for him. These things matter a lot because they can comprise much of Alex's overall wealth. They're going to tinker with his option awards, especially given that there are multiple years in the hopper here, as well as some out-of-the-money options. For the unvested options, they're going to let those expire, but they are going to take the vested options and instead of giving him the original 30 days to exercise, they'll give him one year to exercise.

For the unvested RSUs, instead of Alex forfeiting them, they're saying that all those unvested RSUs are going to fully vest. For the performance stock units,

they're going to waive the service requirements, so he'll get them based on what actually happens in the performance condition, despite the fact that he won't be around when they vest.

Ocker: Josh, it's Jon. When you say "make Alex whole," I assume the comp committee has some severance philosophy and has probably had its comp consultant benchmark the peer group. This offer just doesn't come out of thin air. There must be some rationale for doing this.

Schaeffer: Oh, absolutely. The company is doing what it takes to get Alex to agree to a non-compete and any other pieces of the puzzle that you want to have fall in place. You have to think about this in terms of what is reasonable in the context. All you have is a sense of how this looks compared to the market, as in if this is at market or above market. I don't know if you want to fill in your thoughts. It certainly seems like there are a lot of different changes here.

Ocker: We can get to that. I assume there's some thinking and modeling, and they are doing something consistent with what the peer group does. I'm very interested in what I've heard about the accounting consequences on this equity, which is that the company may have to recognize almost double the grant value in their accounting and proxy disclosure. Can you tell me how much this is going to cost the company?

Accounting Consequences of Award Modifications

Schaeffer : Yes, there's going to be an impact on that, which page 4 of the course materials steps though. We could easily do a presentation longer than this one and just cover modification accounting. Our firm has published a 60-page white paper on how to handle modifications under every scenario we could think of, and we also held a related webinar.

At the end of the day I like to boil modifications down into two sensible key accounting principles:

1. If the employee receives vested compensation, you are going to recognize the expense for that compensation.

2. If they don't vest in the compensation, you recognize no expense.

Also, we're going to give the employee value based on the actual time that the grant they received was effectively paid out. Let's go through a few examples using Alex's compensation, since that's the easiest way to see it.

Let's start with the RSUs. In this case, when the severance occurred, we would expect that Alex would get nothing, or at least nothing vesting beyond his separation date. At this time, these would be considered improbable – they weren't going to vest and now they are, so we need to recognize their expense. We recognize them based on the current stock price, not at the original grant date a year or two ago, because those awards are gone and have been replaced with this new one.

That, Jon, gives rise to the double count you are talking about. You've effectively granted the award once, maybe even earlier this year. He's not getting the original award, but you're essentially granting him a replacement award.

Ho: Josh, I assume that at this point if the stock went up now it's possible for the modification value to be greater than the original value.

Schaeffer: It could be substantially greater. Of course, it could be less as well. It's basically treated like a new grant. In certain cases, such as an award that was going to vest before and it's still going to vest now, there's this one-sided calculation where it can only go up, not down. However, that's not what happened here. Here, it's basically treated like a new grant.

The performance and TSR grants are going to be treated the same as the RSUs, so that means that people need to call folks like us to revalue their TSR awards with an updated Monte Carlo simulation.

For the options, since they've already vested, what we're looking at here is how much more did the company give this executive by updating these awards. How much more are those options worth because they were extended? That's where we get to an incremental expense. Alex already has something, but now he has something of more value. We're going through that exercise next, as if we were vesting additional options based on a completely new grant construct.

Hopefully that lays out the construction of where the expense is coming from and where these pieces are going to be derived from. J. T., do you want to talk through where they go once we have these calculated?

Termination Arrangements May Change Who Is An NEO

Ho: Thanks, Josh. There are two reporting rules I want to cover that will determine whether Alex will be an NEO based on his fiscal 2019 compensation. One rule is that we must consider the incremental fair value of any modified equity awards in determining who is an NEO.

It's very possible, for example, for Alex to have received an equity award grant in 2019 and for that same award to be modified. In that circumstance, we'd be including both the grant date fair value of the award plus the incremental fair value of the modified award.

Similarly, for all the equity awards that were granted in a prior fiscal year, we'd still have to include the incremental fair value of the modified grant this year. The same goes with the incremental fair value of the option extension. Under the summary compensation table rules that apply in determining who is an NEO for 2019, we'd be including the incremental fair value of the modified awards, which can be quite significant in some circumstances.

Similarly, there is another rule in place for "all other compensation" that tells us that we need to include all severance that's paid or accrued in 2019. "Accrued" means that the executive basically is entitled to that severance even if it's not paid up front because all the necessary performance conditions are satisfied.

When we look at the cash severance that Alex can potentially receive, we see that it's all going to be paid or accrued this year. It's not spread out over time. So, in this particular example, he's going to be an NEO.

This means that the incremental fair value of his modified equity awards plus his cash severance will appear in the summary compensation table and grant of plan-based awards table. It also will appear in the CD&A because we're going to have to describe what compensation decisions related to 2019 compensation. It's also going to appear in a section after the summary compensation table where you discuss change in control and termination benefits.

The agreement would also need to be filed with the 10-K or the 10-Q, depending on timing.

The option extension would also result in Form 4 reporting. Similarly, in the case of the time-based RSUs, if they weren't previously reported in Table 1 of the Form 4 and they vest, we'd have a movement from Table 1 to Table II and if taxes are

satisfied through share withholding, that could also result in a reporting event for the accelerated time-based RSUs under Form 4.

There were ways to structure Alex's severance which wouldn't result in him being an NEO. I can touch base on that briefly. For example, if it were the case Alex stopped being an executive officer in 2019 but continued in the role of an executive advisor through the end of the year, so that his employment didn't actually terminate and get any of these benefits until 2020, then it's possible for him to not be an NEO. In that situation, the incremental fair value and severance would have been recognized in a year when he wasn't an executive, so he wouldn't be an NEO.

Planning Opportunities

Ocker: J. T., can I jump in?

Ho: Absolutely, Jon.

Ocker: I'm interested more in talking about how to push this into 2020 and out of 2019. Staying with a termination of employment in 2019, this revalued equity literally pushes Alex into the summary compensation table and leapfrogs the general counsel as an NEO – see slide 5.

I'm wondering how we can tell shareholders that this modification value, which is almost half the equity award value shown in the table, that's not new compensation. It's the old grant that is being revalued. How do we get the shareholders to see that the package is being exaggerated by about $700,000? Also, is there anything we can do with that cash severance so that it all doesn't show up in all the other compensation tables?

Ho: Yes. Those are great questions.

Assuming, for example, that Alex is an NEO regardless of any movement of compensation to another year, etc.,- the incremental fair value of the modified awards would appear as a new grant in the summary compensation table and the grant of plan-based awards table. I have seen companies deal with that by including a footnote stating that this isn't a new grant but rather this is the modification value that results from an executive receiving acceleration, continued vesting benefits, etc.

The other thing a company do, which I think you and Rob will touch on, providing the rationale for such payments and benefits in the CD&A.

By the way, there are other ways to ensure that Alex isn't an NEO. For example, you could provide that the payments aren't made up front, but rather are made over time. For example, that $1 million bonus, we could say gets paid in a future year.

The key to this is to condition those payments on certain restrictive covenants. Reg S-K CDI 119.13 says if amounts aren't paid until the future and are conditioned on performance conditions, which under the CDI could include compliance with a covenant not to compete, then it's possible to not recognize that compensation until later. So it wouldn't be picked up in 2019 in determining whether Alex is an NEO. There are often sound business reasons for doing that too, because you might not want Alex to have these payments up front until he has satisfied all these conditions. It's very difficult to claw back amounts once they are paid, even if they're not earned because of a covenant violation.

Corporate Tax Deductions

Ocker: We'll get into clawbacks, and those can be tough to enforce. Are there any tax benefits to not paying it in a lump sum? Also, are there any tax benefits to paying it to Alex if he's not an NEO? I've heard a lot about the repeal of Section 162(m), but I'm a little fuzzy on that concept.

Ho: Jon, you're right there were changes to Internal Revenue Code 162(m).

It's still the case that there's a $1 million deduction limitation on amounts paid to "covered employees." The definition of covered employees, however, has been expanded now to include anyone who has ever been a CEO or CFO, and the next three highest paid.

Once you're a covered employee, you're always a covered employee. If Alex ends up being a named executive officer, he's a covered employee and is subject to that $1 million tax limitation.

To your point, there's two ways to avoid this. One is he's not an NEO in the first place, which we could do if we were to move the incremental fair value of his modified awards or his severance to another year.

If he was an NEO, we could still possibly lessen the tax deduction impact to the company by staggering the payments, so they fell within the $1 million threshold for each of the years in which they are paid or at least try to get close to that limit.

Ocker: My guess is, I've seen a little of this, but we may see the pendulum swing from emphasis on getting a lump sum to getting installments. I know shareholders will like that.

I have another question. It sounds like this company may have had some sort of policy but decided to do this package for Alex as he's going out the door. The compensation committee exercised its discretion to give him this package.

Can we avoid modification if we have a non-change of control severance plan that already provides for these benefits? Is there still modification or would that avoid it, Josh?

Schaeffer: If you have that locked in, it does avoid the modification on a lot of stuff. That's a great planning point.

It also eliminates the need to value the award at this replacement date, because in that case, the award was never replaced. You know that you're going to get it if these things happen.

Ocker: That's very interesting. We all know this, but J. T. and Rob, some companies philosophically avoid having a severance plan because they don't want shareholders to think they have a severance plan. Then they don't have to file the plan and have Form 8-K disclosure about it. They have an ad hoc policy pursuant to which they can enter into severance agreements in appropriate circumstances.

Another business reason to do that, independent of disclosure, is they don't want to have severance as peanut butter for everybody to terminate without cause. They want to have discretion, which is in the shareholders' interest, to pick and choose who gets a severance. But it sounds like there's a significant accounting consequence of not having a severance program that you have already described to shareholders.

Ho: Correct. And for companies that do have an ad-hoc policy, I want to bring attention to another point.

Josh, it strikes me that you could still amend these awards before you ever encounter a termination situation like this. To the extent a company wants to move

away from that policy and adopt a more formal severance plan, you could amend these awards when there isn't a separation being contemplated and avoid the modification results that occurred here. Is that right?

Schaeffer: That is absolutely right. When we see those, we look at how many people might have losses because of severance. Typically we value this as a partial modification based just on that to account for the fact that some people are going to leave the company at some point.

With that said, it must be before you're contemplating Alex's termination. You can't say, "Oh, look on Monday when we did this, it was probable that this guy was going to stay around until he vests," and then terminate him on Tuesday.

Instead, it should to be a legitimate modification for multiple people done without a specific termination event in mind. Otherwise, in simple terms, you will need to be honest with what you're doing, and the accounting will hold you to that.

Ocker: Josh, thank you for that. J. T. before we move on to Rob and what investors think about all this, let's briefly discuss how you could push this into 2020.

In my experience, half the time the person needs, for whatever reason, to go immediately. The other half of the time, they may or may not have the successor; but they may need transition services.

They may want the person to stick around a while. I think there might be good and valid independent business justification for a person sticking around. It sounds like that avoids some tax and disclosure on say-on-pay issues.

Ho: That's right. Ultimately, again, I want to emphasize to the audience there's got to be sound business reasons for doing this.

Where you have a friendly departure and need someone to help transition the new person taking on the role, the former executive officer could continue on as an executive advisor. That is what I was alluding to in the scenario where the individual steps down as an executive officer before fiscal year-end but continues to be employed throughout the rest of the year and beyond.

The actual termination doesn't occur until the following year when they are no longer an executive officer. This could be a scenario for which there are good

business reasons which results in the person not being an NEO and not incurring these consequences that we just mentioned.

You can also have situations where you don't want someone to step down as an executive officer until a successor is in place. However, if the person ceases to be an executive officer early on in the following year, you still need to worry about whether the person gets picked up as an NEO even though they might not get any new equity awards and their earned salary is lower, depending on the timing of the cash severance and the equity modification value.

These are some of the alternatives that the compensation committee should be made aware of when deciding what direction to go.

Say-on-Pay Strategies

Ocker: For the audience, this is all shown on slide 6. Rob, what do your institutional shareholders think about this? What do the shareholder advisory firms like ISS and Glass Lewis think about severance?

Rob Zivnuska, *Managing Director, PJT Camberview*: When it comes to severance, obviously, the primary focus in designing the plan is about meeting the needs of the business. Public companies do have these disclosure obligations so it's important to think about shareholders, as well.

Shareholders are influenced by the two major proxy advisory firms, ISS and Glass Lewis, which both produce research that is widely distributed. It's important to know what the red flags are for proxy advisory firms. For example, tax gross ups are a sensitive area for them. Another area is paying severance in a publicly visible situation that looks like a termination.

For example, what if Alex is involved in some #MeToo scenario or there's an accounting scandal going on that implicates his role? Those are going to be bigger issues for the proxy advisors.

For most of the shareholders in your shareholder base, that advice from the proxy advisory firms is just influential, it's not controlling. They will be making their own individual voting decisions so you will have the opportunity to communicate with them and capture their support, even if there's concern being cited by the proxy advisors.

The primary focus for say-on-pay analysis, which is where you will see any concerns about Alex's severance manifest, is CEO compensation. CEO compensation and the alignment of pay on performance versus peers for CEOs is mostly what shareholders are thinking about when looking at say-on-pay.

Usually something happening with an NEO is given less attention and potentially could skate under the radar. An outlier approach, one-time payments or severance payments to other NEOs, like Alex, can draw attention.

For our purposes today, I am assuming that Alex's award does hit some red flags. We will discuss how to navigate situations where it's drawing attention.

Ocker: Rob, I take your point. I worry primarily about how the CEO comp looks to the advisors and to the shareholders. So, factor into your analysis that we're not doing too great on our relative degree of alignment. We may even get a poor score on the ISS financial performance assessment and be of high concern.

Let's say we have heat on us with the CEO, and now we've got Alex's package. What happens then?

Zivnuska: Exactly. In a scenario like that, this is the kind of issue that can emerge as a tipping point for investors. They're looking and see a scenario that they are not sure they are comfortable with. Then they see one or two things that stand out, like a severance package that maybe seems a bit rich, and that heightens their concern about what's happening with your program.

In that situation, you really want to take control of communication of Alex's package by telling your story in the right way. You want to tell your story the right way framed in the context of your overall compensation approach.

Also, you want to deliver a disclosure that's easy to understand by breaking down each element of Alex's package into digestible components. I would take advantage of formatting. You can use tabular presentation or charts to convey key points, not only regarding his package but your whole program.

The slide in the case study materials on page 3 is an example of how you could theoretically breakdown Alex's package into components. It is probably in more detail than you want in your proxy statement. It's indicative of how you take a complex package and break it down into discrete elements.

The other thing you want to be sure you're doing is explaining the rationale for giving Alex a substantial severance package. Understanding why a choice was made by the compensation committee can enable a proxy advisor or an investor to support the say-on-pay proposal, even in a situation that otherwise would trigger an against recommendation.

Additionally, market context can be helpful. Alex may be an executive whose understanding of our business could be harmful in a highly competitive market that we're operating in. Securing a non-compete is valuable to the business.

The say-on-pay decision isn't going to turn solely on Alex's severance payment. You want to make sure that you have positioned your compensation program in a positive light and eliminated any other potential areas of criticism is very helpful.

When it comes to pay for performance analysis, we can assume your management team is already making their best efforts on the performance side of things. But if there's something you know that is a historical thorn in the side of your investors, for example, some legacy tax gross-ups in employment agreements, then this might be the year that you negotiate with those executives and get those gross-ups taken out of their employment agreements. That would give you a positive change to your program that could sit alongside some of the more concerning elements that investors are otherwise going to be focused on.

Mitigating Features: Clawbacks & Forfeitures

Ocker: Rob is there anything we can do with a clawback? Is there anything we can do to expand that? I hear institutions now like to go beyond financial restatement situations to conduct that may put the company in a bad light or create reputational harm.

The CBS situation, which isn't a clawback but more of a non-pay. Can we help our situation by beefing up the clawbacks that Alex is facing?

Zivnuska: I would say clawbacks are a hot topic of late in the investor community. You can make a change or make the terms of Alex's specific clawback provisions more onerous than your existing clawback program or get even more points by making a change to your overall clawback.

If you have an existing clawback program in place, adding a reputational event trigger in addition to the kinds of accounting issues that are in a traditional

clawback, where the clawback only occurs in the event that there is a required modification or material modification to prior reporting, could be very helpful.

On the investor side there's a lot of concern about this because they see high-profile incidents, whether that's in the #MeToo context or some other type of scandal, where there's a sense that executives are exiting and have received significant compensation for their roles. There's not otherwise a tool for the compensation committee to act and recoup wages that were paid out in the context that assumed these people were acting in good faith.

Ocker: In California, getting money back from an executive can be very hard unless you get their consent. The audience should be careful if they have an executive in company issuer in California. It can be done, but you're going to have to bake it into their bonus agreement or equity award that optimize the ability to get it back.

Rob, it sounds like if we explain the double counting, in my opinion for a non-CEO, 18 months is on the high end. I agree with you. I think in and of itself it's not going to change a say-on-pay vote in the absence of other reasons pressuring the company, like a CEO degree of alignment test.

It might be a good idea for tax reasons and SEC disclosure reasons, as J. T. pointed out, to not pay it in a lump sum and pay it in two tranches or installments. Then you get the benefit of not having to pay the money and going through the agony of a clawing back if they don't qualify to get the payment – if it's an installment, you simply don't pay it. The shareholders could benefit from that. In other words, without changing the economics of this, you could change the delivery mode. It would look better in the proxy.

I also agree with you in terms of how you should present the market context and give them all the facts. The main thing ISS has issues with is if it sees things out of control with the comp committee and believes it isn't managing a good ship. Even if there are some things ISS may disagree with, if it looks like the comp committee is being conscientious and telling a good story, ISS, for the most part will go along.

But if we have a problem for whatever reason and are worried about ISS, should we go out ahead of the proxy mailings? How should we tee this up to shareholders? God forbid ISS does recommend a "no" vote and Glass Lewis does the same, then what do we do? Do you have any thoughts on that?

Zivnuska: Absolutely. One of the considerations here is timing. If this happens early enough in the year, you would hopefully be able to disclose and incorporate some messaging around this in your outreach to shareholders. You are hopefully doing this in the off-season which is outside the scope of soliciting votes.

It's helpful to go out if you are a typical year end company and you're having your proxy and annual meeting in the spring. Go out in the fall and solicit input from shareholders about the range of governance changes you are looking to implement over the course of the coming year.

You could also talk about compensation in the context of those conversations. Capture their feedback, take their temperature and understand what key areas of sensitivity might be when that annual meeting rolls around.

That's a great way of tilling the field and prepping investors for what they'll see eventually in your proxy disclosure.

Ocker: Rob, to be clear though, when you say prepping, we would still have to be concerned about things like Regulation FD, etc. and all that pre-meeting engagement. We are still seeking more of their opinion as opposed to saying what we're planning to do or so forth, right?

Zivnuska: Absolutely. Certainly, you always must recognize the limits of that communication that are reflected in Reg FD and otherwise in the regulatory space.

We are really talking about situations where you have provided disclosure and you're speaking to disclosure you provided. That's also true after you file your proxy statement and you are in solicitation mode. This is another opportunity to go out and talk to investors, to try and pick off their votes one by one.

One of the tools you might want to deploy in that space is potentially supplementally filing a deck that in the course of 10 or 12 slides summarizes the key points from your proxy statement.

It also positions your story in the best possible light and does so potentially with some modification in terms of the way you portray things in the proxy statement, to adjust for concerns that are highlighted in that ISS or Glass Lewis report. You could do a little fine tuning with a supplemental filing without mentioning ISS or Glass Lewis in that document.

Then when you go out and have conversations with investors, you are speaking to concepts and facts that have already been publicly disclosed broadly. You are in a place where it's okay to have a one-on-one conversation where you can address the particular concerns of any given investor.

Something to be aware of is that it often happens when you walk in the room to talk about concerns that have been highlighted in the ISS or Glass Lewis report, the investor has some questions on that front. Then they might also want to talk to you about board diversity, quality or the corporate culture.

There's a whole panoply of issues that come up in these conversations that you want to be sure you're prepared for. In having those conversations and speaking to publicly available information, make sure you are connecting the dots for the investor and can persuade them to be supportive.

Ocker: Rob, it sounds like there's a lot of good things that can be done with shareholders to avoid a bad result on management's say-on-pay proposal. It all starts with getting everybody involved early in the process to choreograph it so that the needs of the business are met, the shareholders are not offended, and the executive departs in a good space. You also need to have protections in place.

Proper plan design; whether you have, as we have in our scenario, an ad hoc situation that does gives rise to compensation expense that must be disclosed instead of having a plan where you don't have that. As J. T. points out, a scenario which depends on why the person is leaving or if there is a successor, they stick around on a transition basis. What I'm hearing is you get everyone involved early and plan to get optimal results.

Rob, to your point, if you've done your homework and the program is reasonable and structured properly so there's benefits to the shareholders, they are protected with the clawback transition service, the proper release, the company gets consideration. You don't have poor pay practices, a good program design, and you're in good shape, then you disclose it properly.

If, for whatever reason, there is a problem, you go to shareholders and make your case and demonstrate to them that the comp committee is acting in their best interest. You may be able to get approval even if you have a limited timeframe and a package some people may think is overly generous but necessary for the business.

Then we have dealt with the timing of this. We've dealt with the accounting and SEC disclosure consequences. We've optimized, if possible, the company's tax deduction under 162(m), and the shareholders may even like the program.

Josh or J. T., I don't know if there's anything more you want to say or any loose ends you want to tie up. Rob, is there anything else you want to say? We've done a reasonably good job of explaining this case study and the different variations on timing and how to deal with them.

Schaeffer: My one point I would add is people don't like to think about these things until they have to happen. Then it's usually too late.

People are going to leave your company whether you like to admit it or not, and these scenarios will come up. Being proactive can be a good way to know that you're going to get through these things as painlessly as you can when the time comes.

Importance of Modeling

Ho: Another point I'd like to get across is the importance of modeling. I had a few models in these worksheets. This is something that I have done for a few companies where I look at these different scenarios and map out the numbers with the accounting and finance teams, and with the Josh Schaeffers of the world.

You should also consider: (1) the quantitative analyses that your compensation consultant can put together regarding how the company might perform on the ISS CEO tests, (2) how the severance benefits might look from an ISS and Glass Lewis perspective, and (3) how the severance benefits might look from your institutional shareholders' perspectives.

The bottom line is modeling, planning and running these quantitative tests are important things that you should do. The compensation committee may not look at all this data. But it's good to have it so you can speak intelligently about whatever points you want to raise.

Ocker: Amen on that J. T. Getting all your ducks in a row is important. This is not an uncomplicated area. As you mentioned, it's cross-discipline.

Having a timeline in place, consequences of different points on that timeline, getting your story, facts and figures together, and your disclosure together allows

the comp committee to be fully informed and make appropriate decisions. It allows us to adequately disclose it.

Sometimes we get in these comp committee meetings and things fly by. You must keep your cool and cover all the issues. We are about done, and I want to thank the audience for attending our webinar on Termination: Working Through the Consequences. Thank you very much.