
United States of America

Stock Option Plans

Employment

Labor Concerns

There is a risk of employees claiming that they are entitled to compensation for loss of rights under the Plan where the Plan is amended or discontinued or where their employment is terminated.

It is recommended that Plan provisions be drafted so as to preclude leased and/or temporary employees and independent contractors from claiming entitlements under the Plan (absent a specific intention to include these workers).

There are laws which prohibit discrimination against, and/or less favorable treatment of, employees on certain grounds, including age, gender, disability and part-time status. Companies should be mindful of this when determining the eligibility of employees to participate in a Plan, the benefits being granted and the exercise of any discretion.

Communications

A disclaimer should be included in the award agreement, which acknowledges each employee's receipt of the Plan documents and the discretionary nature of the Plan, and confirms that termination of employment will result in the loss of unvested rights.

Government filings must be made in English.

Electronic execution of award agreements may be acceptable under certain conditions, which are not onerous.

Regulatory

Securities Compliance

Neither the grant nor the exercise of Options is likely to trigger a requirement for a full prospectus, provided that the special exemption and special registration process created by the US Securities and Exchange Commission (the "SEC") have been complied with:

- (i) *Reporting companies.* Issuers with a class of securities registered under the Securities Exchange Act of 1934 (the "**Exchange Act**") – which includes companies listed on a US stock exchange – may use a Form S-8 registration statement, which requires less disclosure than other SEC registration forms. The Issuer must deliver to employees a prospectus containing a description of the Plan, together with the most recent annual report.

-
- (ii) *Non-reporting companies.* Other Issuers cannot use Form S–8, but they are permitted to grant a limited amount of securities under employee benefit plans pursuant to a special exemption. There are no special information requirements for employees unless the value of securities issued in any 12–month period exceeds \$5 million, at which point financial statements and other disclosure must be provided.

While the SEC is responsible for enforcing of the US federal securities laws, each individual state has its own securities laws, referred to as “blue sky laws”, and its own regulatory agency which administers the law. Blue sky laws are often superseded by federal law, particularly with respect to reporting Issuers, but they do apply to non-reporting Issuers. While most state blue sky laws have exemptions from registration for Options that are exempt from federal registration, some do not, and a few require notice or a streamlined registration procedure. The laws of each state where any Plan participant resides must be checked prior to undertaking any securities offerings or sales in that state.

Foreign Exchange

There are no foreign exchange restrictions applicable to the Plan.

Data Protection

The US has a variety of sector-specific state and federal laws that regulate certain classes of data. It is best practice to build into Plan enrollment forms a written employee consent for the processing and transfer of personal data for all Plan purposes. Plan administrators must also comply with any applicable privacy policy and with document–retention laws that mandate retaining tax–related information for certain periods.

Tax

Employee Tax Treatment

For non-qualified Options (i.e., Options not granted under a Section 422 incentive stock option (“ISO”) plan), an employee is generally subject to income tax on the gain on exercise (i.e., the excess of the market value of the Stock acquired over the aggregate exercise price).

Capital gains tax is also payable on any gain upon the net proceeds of sale of the Stock.

Social Security Contributions

Social security contributions are due from both the Subsidiary and the employee on all income received up to a threshold (which is subject to change on an annual basis).

Tax-Favored Program

Favorable tax treatment, in the form of ISOs, may be obtained if the Plan is structured to comply with Section 422 of the Internal Revenue Code. If the conditions for an ISO are satisfied, neither the grant nor the exercise of an ISO with an exercise price at least equal to the fair market value of the underlying Stock as at the date of grant will generally be a taxable event (although a specific liability for "alternative minimum tax" may still apply). An employee will be subject to tax on any gain upon the net proceeds of the sale. The conditions for an ISO include that the:

- (i) Option is granted under a Plan approved by shareholders of the Issuer within 12 months (before or after) of adoption of the Plan; and
- (ii) underlying Stock must be held until at least the later of: (a) two years from the grant date; and (b) one year from the exercise date.

Withholding and Reporting

The Subsidiary has an obligation in relation to non-qualified stock options to withhold the income tax and social security contributions due.

The Subsidiary has no withholding obligation in relation to ISOs.

Reporting requirements apply to both the Subsidiary and the employee.

Employer Tax Treatment

In the case of non-qualified Options, a deduction is available to the Subsidiary equal to the amount of ordinary income reported by the employee. In the case of ISOs, no deduction is available.

United States of America

Restricted Stock and RSUs

Employment

Labor Concerns

There is a risk of employees claiming that they are entitled to compensation for loss of rights under the Plan where the Plan is amended or discontinued or where their employment is terminated.

It is recommended that Plan provisions be drafted so as to preclude leased and/or temporary employees and independent contractors from claiming entitlements under the Plan (absent a specific intention to include these workers).

There are laws which prohibit discrimination against, and/or less favorable treatment of, employees on certain grounds, including age, gender, disability and part-time status. Companies should be mindful of this when determining the eligibility of employees to participate in a Plan, the benefits being granted and the exercise of any discretion.

Communications

A disclaimer should be included in the award agreement, which acknowledges each employee's receipt of the Plan documents and the discretionary nature of the Plan, and confirms that termination of employment will result in the loss of unvested rights.

Government filings must be made in English.

Electronic execution of award agreements may be acceptable under certain conditions, which are not onerous.

Regulatory

Securities Compliance

Neither the grant nor the vesting of Restricted Stock or RSUs is likely to trigger the requirement for a full prospectus provided that the special exemption and special registration process created by the US Securities and Exchange Commission (the "SEC") have been complied with:

- (i) *Reporting companies.* Issuers with a class of securities registered under the Securities Exchange Act of 1934 (the "**Exchange Act**") – which includes companies listed on a US stock exchange – may use a Form S-8 registration statement, which requires less disclosure than other SEC registration forms. The Issuer must deliver to employees a prospectus containing a description of the Plan, together with the most recent annual report.

-
- (ii) *Non-reporting companies.* Other Issuers cannot use Form S-8, but they are permitted to grant a limited amount of securities under employee benefit plans pursuant to a special exemption contained in Rule 701 under the Securities Act. There are no special information requirements for employees unless the value of securities issued in any 12-month period exceeds \$5 million, at which point financial statements and other disclosure must be provided.

While the SEC is responsible for enforcing of the US federal securities laws, each individual state has its own securities laws, referred to as “blue sky laws”, and its own regulatory agency which administers the law. Blue sky laws are often superseded by federal law, particularly with respect to reporting Issuers, but they do apply to non-reporting Issuers. While most state blue sky laws have exemptions from registration for Restricted Stock and RSU plans that are exempt from federal registration, some do not, and a few require notice or a streamlined registration procedure. The laws of each state where any Plan participant resides must be checked prior to undertaking any securities offerings or sales in that state.

Foreign Exchange

There are no foreign exchange restrictions applicable to the Plan.

Data Protection

The US has a variety of sector-specific state and federal laws that regulate certain classes of data. It is best practice to build into Plan enrollment forms a written employee consent for the processing and transfer of personal data for all Plan purposes. Plan administrators must also comply with any applicable privacy policy and with document-retention laws that mandate retaining tax-related information for certain periods.

Tax

Employee Tax Treatment

For Restricted Stock, an employee is generally subject to income tax on the value of the Restricted Stock when it vests.

For RSUs, an employee is generally subject to income tax on the value of the Stock received on vesting.

Capital gains tax is also payable on any gain upon the net proceeds of the sale of the Restricted Stock or Stock.

Social Security Contributions

Social security contributions are due from both the Subsidiary and the employee on all income received up to a threshold (which is subject to change on an annual basis).

Tax-Favored Program

There are no tax-favored programs applicable to Restricted Stock and RSU plans.

Withholding and Reporting

The Subsidiary has an obligation to withhold the income tax and social security contributions (if the threshold has not been met).

Reporting requirements apply to both the Subsidiary and the employee.

Employer Tax Treatment

For Restricted Stock, a deduction is available equal to the amount of ordinary income recognized by an employee.

For RSUs, a deduction is not available.

United States of America

Employee Stock Purchase Plans

Employment

Labor Concerns

There is a risk of employees claiming that they are entitled to compensation for loss of rights under the Plan where the Plan is amended or discontinued or where their employment is terminated.

It is recommended that Plan provisions be drafted so as to preclude leased and/or temporary employees and independent contractors from claiming entitlements under the Plan (absent a specific intention to include these workers).

There are laws which prohibit discrimination against, and/or less favorable treatment of, employees on certain grounds, including age, gender, disability and part-time status. Companies should be mindful of this when determining the eligibility of employees to participate in a Plan and the exercise of any discretion.

Communications

A disclaimer should be included in the award agreement, which acknowledges each employee's receipt of the Plan documents and the discretionary nature of the Plan, and confirms that termination of employment will result in the loss of unvested rights.

Government filings must be made in English.

Electronic execution of award agreements may be acceptable under certain conditions, which are not onerous.

Regulatory

Securities Compliance

The exercise of a purchase right is unlikely to trigger the requirement for a full prospectus, provided that the special exemption and special registration process created by the US Securities and Exchange Commission (the "SEC") has been complied with:

- (i) *Reporting companies*. Issuers with a class of securities registered under the Securities Exchange Act of 1934 (the "Exchange Act") – which includes companies listed on a US stock exchange – may use a Form S-8 registration statement, which requires less disclosure than other SEC registration forms. The Issuer must deliver to employees a prospectus containing a description of the Plan, together with the most recent annual report.

-
- (ii) *Non-reporting companies.* Other Issuers cannot use Form S-8, but they are permitted to grant a limited amount of securities under employee benefit plans *pursuant* to a special exemption contained in Rule 701 under the Securities Act. There are no special information requirements for employees unless the value of securities issued in any 12-month period exceeds \$5 million, at which point financial statements and other disclosure must be provided.

While the SEC is responsible for enforcing of the US federal securities laws, each individual state has its own securities laws, referred to as “blue sky laws”, and its own regulatory agency which administers the law. Blue sky laws are often superseded by federal law, particularly with respect to reporting Issuers, but they do apply to non-reporting Issuers. While most state blue sky laws have exemptions from registration for employee stock purchase plans that are exempt from federal registration, some do not, and a few require notice or a streamlined registration procedure. The laws of each state where any Plan participant resides must be checked prior to undertaking any securities offerings or sales in that state.

Foreign Exchange

There are no foreign exchange restrictions applicable to the Plan.

Data Protection

The US has a variety of sector-specific state and federal laws that regulate certain classes of data. It is best practice to build into Plan enrollment forms a written employee consent for the processing and transfer of personal data for all Plan purposes. Plan administrators must also comply with any applicable privacy policy and with document-retention laws that mandate retaining tax-related information for certain periods.

Tax

Employee Tax Treatment

For a non-tax qualified Plan (i.e., one which is not compliant with Section 423 of the Internal Revenue Code), an employee is generally subject to income tax on the value of the discount when the Stock is purchased.

Capital gains tax is also payable on any gain upon the net proceeds of sale of the Stock.

Social Security Contributions

Social security contributions are not due from either the Subsidiary or the employee.

Tax-Favored Program

Favorable tax treatment may be obtained if the Plan is structured to comply with Section 423 of the Internal Revenue Code (a “**qualified plan**”). If the requirements of Section 423 are satisfied (see below), no tax is payable upon the grant or exercise of a purchase right. On sale of the Stock, an employee is generally subject to capital gains tax on the excess of the sale price over the purchase price of the Stock.

Qualified employee stock purchase plans must, among other requirements, (i) offer securities with a purchase price not less than the lesser of 85 percent of the fair market value of the Stock at the beginning of the offering period and the end of the offering period, and (ii) not permit an employee to purchase more than \$25,000 worth of Stock (determined as of the grant date) for each calendar year in which the offering period is in effect.

Withholding and Reporting

The Subsidiary generally has no obligation to withhold the income tax and social security contributions due.

Reporting requirements apply to both the Subsidiary and the employee.

Additional reporting obligations will apply in certain circumstances, including where the purchase price of the Stock was less than 100 percent of the fair market value of the Stock on the grant date.

Employer Tax Treatment

In the case of a non-qualified plan, a deduction is available to the Subsidiary equal to the amount of ordinary income reported by the employee. In the case of a qualified plan, no deduction is available.