



Incentive Plans in a Volatile Market

Forvis Mazars & Frier Levitt

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Incentive Plans in a Volatile Market

Presenter



Nick Withrow

Managing Director, Wealth Advisors

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Overview:

Nick has more than 20 years of experience within the wealth management industry, assisting high-net-worth families and institutions with their investment management and wealth planning needs. He is a member of Forvis Mazars Private Client and the Wealth Management Investment Committee, which establishes firmwide investment strategies. He leads the firm's investment selection committee, a group focused on investment due diligence. He also oversees the investment selection process for the Retirement Plan Consulting service line.

He is a Chartered Financial Analyst® (CFA®) charter holder. The CFA® charter is obtained through the completion of a three-year program with studies in equity analysis, fixed income analysis, portfolio management, accounting, economics, derivatives, and ethics. He is a member of CFA® Society Kansas City. Nick also holds the Chartered Alternative Investment Analyst (CAIA) designation and is a CERTIFIED FINANCIAL PLANNER™ (CFP®) professional.

Qualifications/Experience:

- 20+ years of experience advising high-net-worth families and institutions on investment strategy and wealth planning
- Leads firmwide investment due diligence efforts through Forvis Mazars' Investment Selection Committee and oversees strategy for Retirement Plan Consulting

Incentive Plans in a Volatile Market

Presenter



Candace Quinn, Esq.

Partner

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Overview:

Candace advises multinational and domestic companies on U.S. regulatory compliance with the Internal Revenue Code and ERISA, addressing executive compensation and incentive arrangements, plan-sponsored retirement, and health and welfare benefit plans, including self-funded medical plans. She conducts IRC and ERISA fiduciary operational retirement and medical plan compliance audits which will now include Pharmacy Benefit Manager audit services by Frier Levitt attorneys. She provides U.S. representation for ERISA and tax due diligence reviews in mergers and acquisitions. She has extensive experience advising healthcare and life sciences companies on benefit plan design, compliance, the Affordable Care Act, HIPAA, COBRA, ERISA fiduciary duties and standards of care, plan asset cybersecurity and data privacy, and fiduciary best practice governance. She has represented companies in Department of Labor and IRS governmental plan audits and has supported Plan Sponsor ERISA litigation.

Qualifications/Experience:

- Employee Retirement Income Security Act (ERISA) and Tax Attorney
- LL.M in Tax and LL.M in Energy Law
- Admitted to practice in MA and NY
- More than 25 years of legal and public accounting experience

Incentive Plans in a Volatile Market

Presenter



Devin Tenney, J.D.

Director

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Overview:

Devin Tenney has a decade of experience advising clients on U.S. tax and regulatory compliance in the field of executive compensation and employee benefits. He specializes in compliance review, design, operation, and implementation for long-term incentive plans, including ISOs, NSOs, SARs, RSAs, RSUs, phantom equity, and other nonqualified deferred compensation arrangements.

Devin regularly advises international companies on U.S. federal tax law affecting compensation and benefits, including complex and draconian provisions like IRC §§ 409A, 83, 162(m), 409A—with an emphasis on aligning plan structure with global business goals while mitigating compliance risk. His background includes experience with cross-border equity arrangements and strategic advice on transaction-related compensation matters.

Qualifications/Experience:

- AICPA Employee Benefits Tax Technical Resource Panel, Member (2024–Present)
- DC Bar, Tax Community, Employee Benefits Committee, Chair (2024–Present)
- Tackling Tax (Forvis Mazars web series), Co-Host (2025–Present)
- When Executive Compensation Crosses Borders, International Tax Journal (February 2025)
- Exposing the Hidden Disqualified Individuals of Sec. 280G, The Tax Advisor, (October 2024)
- Common Mistakes in Nonqualified Deferred Compensation Plans, The Tax Advisor (October 2020)
- Traversing Sec. 163(j) Aggregation for Affiliated Service Groups, The Tax Advisor, (October 2019)

Incentive Plans in a Volatile Market

Presenter



Shaun Maloney, CPA/ABV/CFF/CGMA, CFA

Partner

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Overview:

Shaun is a partner with the Forensics & Valuation service line and has more than 15 years of experience, specializing in valuing businesses, intangible assets, and other complex financial instruments.

His experience covers valuations for financial reporting, tax reporting, mergers and acquisitions, shareholder buyouts, corporate planning, and various civil and commercial litigation matters. Shaun has conducted valuations of securities and intangible assets of public and private corporations for share-based compensation (under IRC 409a and ASC 718), impairment testing (ASC 350/IAS 36), purchase price allocations (ASC 805/IFRS 3), derivative reporting (ASC 815), and other purposes requiring fair value measurements under ASC 820/IFRS 13. Prior to joining Forvis Mazars, Shaun was a managing director in a large national accounting firm's financial advisory services group.

Qualifications/Experience:

- Over 15 years of experience specializing in business and intangible asset valuations for financial and tax reporting, M&A, and litigation
- Deep technical experience across key valuation frameworks including ASC 805, ASC 820, ASC 350, ASC 718, IFRS 3, and IRC 409a
- Recognized leader in the valuation field with honors including AICPA's Standing Ovation Award and NJCPA's Ovation Award for Emerging Leaders.

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Presenter



Joe Notaro, CPA

Partner, Accounting Advisory Services

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Overview:

Assisted clients in many complex technical accounting topics, including revenue recognition (including gross-to-net), collaboration arrangements, leases, debt and equity, business combination, stock-based compensation, inventory and impairment assessments

Significant experience with SEC and financial reporting, including periodic filings (Form 10-K, 10-Q) and registration statements (S-1, S-4, S-8), including pro forma preparation and earnings per share calculations

Assisted Fortune 500 Company through strategic divestiture of its US manufacturing operations to an international multinational Company

Qualifications/Experience:

- More than 17 years of consulting and public accounting experience
- Former Big 4 public accounting experience
- Extensive experience in SEC Reporting, Technical Accounting, Audit Support, and Capital Markets Readiness projects

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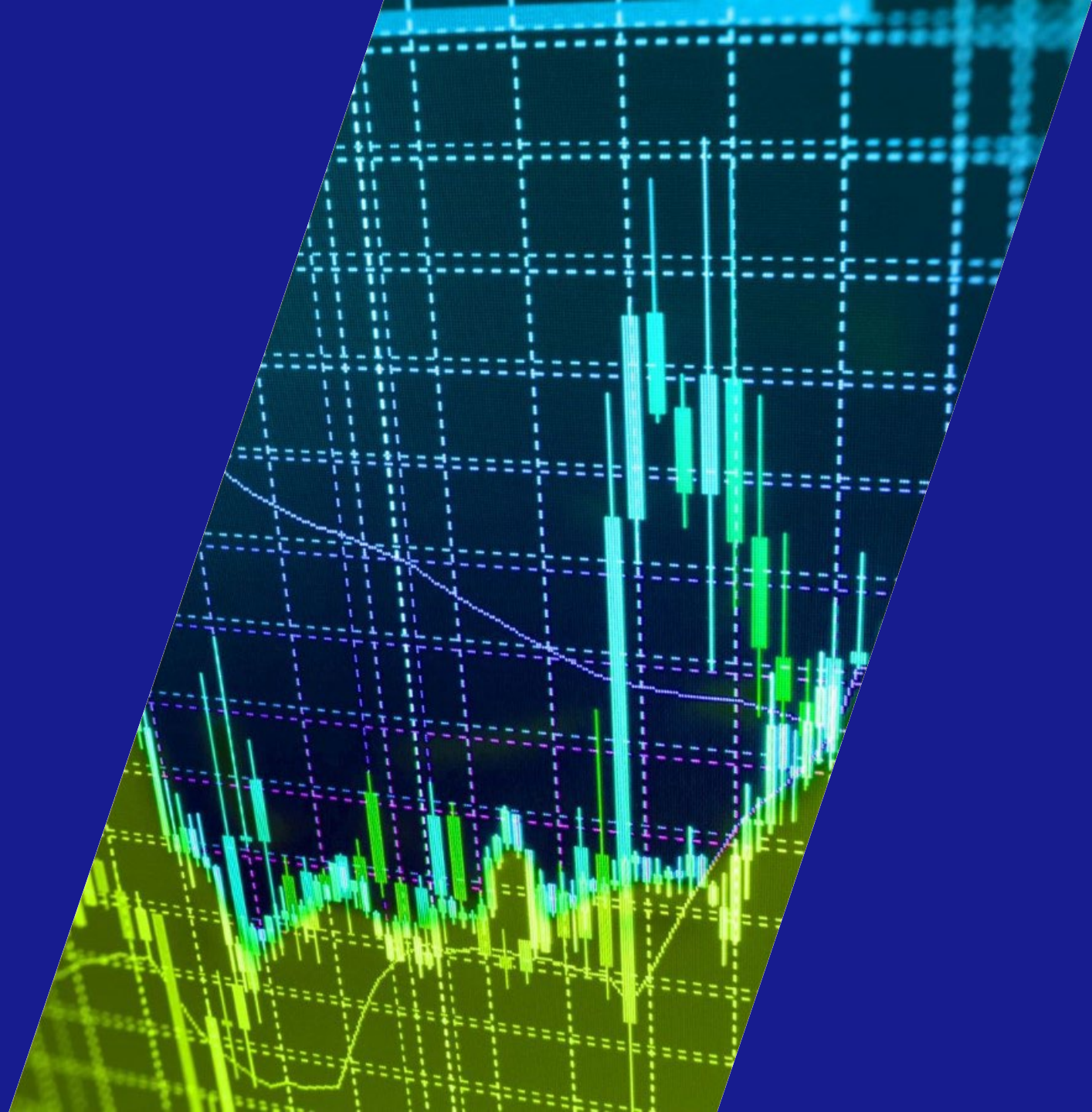
Agenda

1. Drivers of Market Volatility
2. Legal Considerations
3. Tax Considerations
4. Valuation Considerations
5. Accounting Considerations



01

Drivers of Market Volatility



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Drivers of Market Volatility in 2025

Cause Type	Description
Policy Shock	Sudden and aggressive tariff implementations created uncertainty in trade flows and corporate planning.
Supply Chain Fragility	Dependence on global suppliers made companies vulnerable to cost spikes and delays when tariffs hit key inputs.
Index Concentration	Heavy weighting of tech and consumer discretionary stocks in the S&P 500 meant volatility in these sectors disproportionately affected the index.
Investor Behavior	Algorithmic trading and short-term hedging strategies amplified market swings in response to policy headlines.
Geopolitical Overlay	Tariff-related tensions were compounded by broader geopolitical instability, increasing risk premiums across asset classes.

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Drivers of Market Volatility Over the Past 30 Years

Cause Type	Description
Asset Overvaluation	Periods like the Dot-Com Bubble saw excessive speculation, especially in tech, leading to sharp corrections.
Systemic Financial Risk	The 2008 crisis revealed deep flaws in credit markets and risk modeling, triggering widespread deleveraging.
Exogenous Shocks	Events like 9/11, COVID-19, and geopolitical conflicts introduced sudden, unpredictable disruptions.
Monetary Policy Cycles	Shifts in interest rate policy (tightening or easing) often led to revaluations of equities, especially in rate-sensitive sectors.
Behavioral Herding	Investor overreaction and momentum trading during crises or rallies intensified volatility beyond fundamentals.

02

Legal Considerations



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Incentive Awards in Volatile Markets

Intended to attract, retain, motivate, and/or award talent.

Volatility can create problems:

- Managing tariffs, increased manufacturing costs, increased prices, fluctuating stock values, difficulty setting performance targets and achieving original performance goals, and stock option exercise prices exceed the current fair market value of the underlying stock (“underwater options”).

Developing strategies to counterbalance:

- Designing, modifying, or substituting awards to retain and incent talent to achieve company goals and objectives and address risks.
- Canceling and replacing underwater stock options with new options at the lower current fair market value exercise price, or immediately replacing with restricted stock, restricted stock units (RSUs), or phantom stock.

Incentive Plans in a Volatile Market

Incentive Awards in Volatile Markets Continued

Additional considerations in changes to incentive awards can include:

- Tax ramifications for employees and employers, IRC 409A violations for employees, legal limitations, valuation violations, impact of repricing underwater options including accounting and share availability issues, need to conserve cash, substituting awards and extending time for exercise dates—many can potentially create legal, tax, valuation, and accounting issues.

Impact on equity grants based on target dollar value for LTIP awards:

- In volatile markets can exhaust share reserve available for awards.

The possibility of addressing volatility in equity awards can depend on the type of incentive award, and the timing of award grant:

- Not granted,
- Awards granted already,
- Awards not settled yet,
- Performance-based compensation not paid yet.

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Types of Incentive Awards & Legal & Other Limitations to Consider

Short Term – Bonus (may need to conserve cash), and

Long Term – Stock Options (incentive stock options (“ISOs”) and non-qualified stock option)

- Review Plans and Awards
- Extending Exercise Date Limitations
- Cancelling, Repricing or Replacing Issues

Restricted Stock Awards – Review Plan and Awards

Restricted Stock Units (RSUs) – Review Plan and Awards

- Settlement Choices – Cash or Stock?
- Performance Metrics

Phantom Stock Awards-Synthetic Equity – Review Plan and Awards

Stock Appreciation Rights (SARs) – Review Plan and Awards

- Settlement Choices

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Performance Based Targets & Awards – Strategies to Design & Address Awards in a Market Volatility

Timing of Awards

Target Dollar Value Awards

Adjustments to Performance Based Awards:

- Review Plan and Awards
- Addressing Targets for Performance Based Awards
- Is there a Compensation Committee Discretion for Adjustments?

Alternatives:

- Change timing, use relative versus absolute performance goals or ranges

03

Tax Considerations



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Tax Considerations

Stock Options

Volatility can result in stock options becoming underwater (current FMV is less than strike price), defeating their purpose

- Repricing stock options is a potential avenue where options are canceled and reissued
- Significant risk with option repricing strategies

Concerns

- 409A compliance
 - § 409A applies to all forms of NQDC. Failure to comply results in immediate income inclusion + 20% excise tax + premium interest tax (owed by recipient; employer has reporting obligation)
 - Effectively eliminates discretion
- Stock options are exempt from the onerous 409A rules if, and only if, they meet certain requirements to be excepted
 - Strike price must equal or exceed FMV of stock on grant date
 - No deferral features
- Multiple instances of repricing may cause option to fail 409A exception
- Market volatility increases risk of options being granted below FMV, subjecting them to 409A (to which they're inherently noncompliant with due to discretion to exercise)

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Tax Considerations

Restricted Stock Awards

Transfer of property on grant date subject to a substantial risk of forfeiture

§ 83 overview

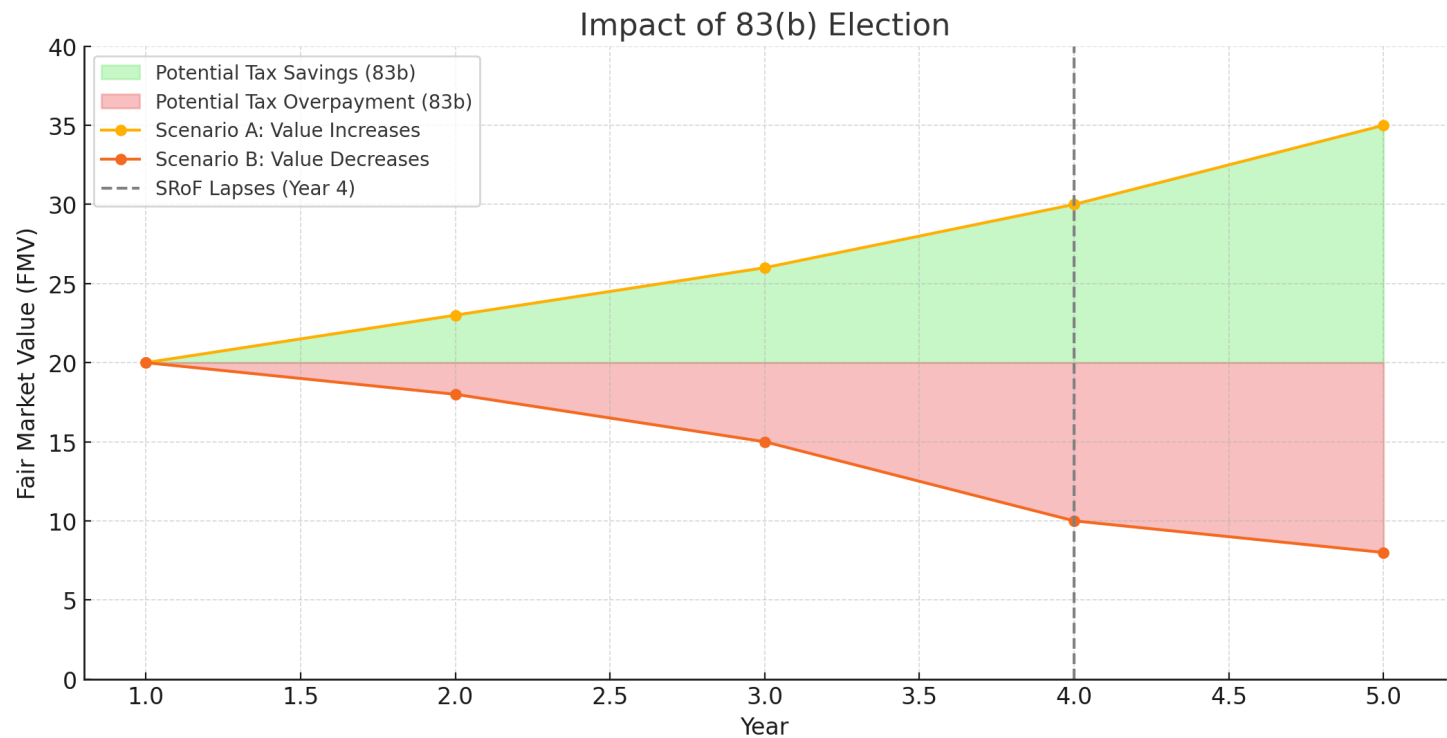
- Transfer of property in connection with performance of services
- Taxable amount is FMV on date of transfer less amounts paid, if any
- Taxation timing
 - **Now:** unrestricted/vested property / restricted property with 83(b) election
 - **Later:** restricted property without 83(b) election (when SROF lapses)

§ 83(b) election

- Timing & filing requirements
- Cash flow considerations
- Future volatility can result in payment of excess tax

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Tax Considerations



Scenario	# of RSAs Granted	FMV at Grant	FMV at SRoF	Estimated Tax Rate	Tax with 83(b)	Tax without 83(b)	Tax Savings / Loss
A (Value Increases)	1,000	20	30	40%	\$8,000	\$12,000	\$4,000
B (Value Decreases)	1,000	20	10	40%	\$8,000	\$4,000	(\$4,000)

Incentive Plans in a Volatile Market

Tax Considerations

§ 409A valuations

The 409A regulations require the use of a reasonable method, taking into account all relevant facts and circumstances, and factors such as the value of tangible and intangible assets, the present value of anticipated cash flows, and recent arm's-length transactions, to name a few.

However, the 409A regulations provide **three safe harbors** that shift the burden to the IRS to show the valuation is unreasonable:

1. **An independent appraisal;**
2. A formula-based valuation; or
3. For illiquid stock of start-up companies, reasonable, good-faith valuation evidenced by a written report issued by someone who is qualified, but not necessarily independent.

Valuations can be used for up to **12 months** but may not be used if value **materially affected** by subsequent event.

04

Valuation Considerations



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Valuation Considerations

Valuation in Volatile Markets

- Volatility and tariffs increase valuation complexity
- Necessitates adjustments across all valuation methodologies
 - **Income approach** – cash flows, discount rate
 - **Market approach** – metrics, multiples
- Impacts liquidity/marketability
- Uncertainty is difficult to incorporate but not impossible—use the tools we have:
 - Scenario analysis
 - Discount rates

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Valuation Considerations

Income Approach – Capitalized &/or Discounted Cash Flow (DCF) Methods

- Value of a business/security = the present value of its future cash flows
- Value is principally a function of (1) expected cash flows and (2) risk of achieving those cash flows
- Impact of volatility on key inputs:
 - Expected cash flows (forecast):
 - Volatility affects forecast reliability and risk premiums
 - Tariffs may impact margins and growth assumptions
 - Risk (discount rate):
 - Increased uncertainty/volatility = higher risk = higher discount rates = lower valuations (typically)
- Actions to consider:
 - Scenario modeling, particularly in tariff-heavy businesses
 - Evaluation, scrutiny and documentation of assumptions

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Valuation Considerations

Market Approach – Market Multiples

- Value of a business/security = financial metric x market multiple
- Value is a principally a function of (1) financial results (historical and expected), (2) market transactions and their implied multiples, (3) benchmarking of size, growth, or profitability relative to comps
- Impact of volatility on key inputs:
 - Financial results:
 - Historical results may not be representative of future expectations
 - Tariffs may impact margins and growth expectations
 - Multiples:
 - Higher risk = lower multiples (typically)
 - Benchmarking:
 - Larger size = higher multiple (typically)
 - Higher profitability = higher multiple (typically)
 - Higher growth = higher multiple (typically)
- Actions to consider:
 - Scenario modeling, particularly in tariff-heavy businesses – trailing vs. forward metrics
 - Consider reliability of market multiples in volatile market – multiples swing drastically, *i.e.*, April 3rd
 - Evaluation, scrutiny, and documentation of assumptions – peer group selection criteria

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Valuation Considerations

Backsolve Method

- Value of a business/security can be estimated with reference to arm's length transactions in the company's securities
- Prevalent in 409a valuation—often the only or most reliable option for early-stage, pre-revenue companies
- Value is a principally function of (1) transaction price, (2) volatility, (3) time to exit
- Impact of volatility on key inputs:
 - Transaction price may no longer be relevant or may require adjustment
 - Changes in volatility redistribute equity among various classes
 - Volatile markets and tariffs may shift expected exit timing, *i.e.*, IPO, sale, etc.
- Actions to consider:
 - Scenario modeling related to exit timing
 - Consider reliability of transaction price and potential adjustments based on market movements
 - Evaluation, scrutiny, and documentation of assumptions – peer group selection criteria

Incentive Plans in a Volatile Market

Valuation Considerations

Minority Discounts

- The value of a security is impacted by (1) control and (2) marketability
- Minority discounts are supported by qualitative and quantitative analysis
- Use option models or restricted stock studies
- Impact of volatility on key inputs:
 - Higher volatility = higher discount for lack of marketability (DLOM)
 - Volatile markets and tariffs may shift expected exit timing, *i.e.*, IPO, sale, etc.
 - Longer term = higher discount for lack of marketability (DLOM)
- Actions to consider:
 - Scenario modeling related to exit timing
 - Evaluation, scrutiny, and documentation of assumptions – peer group selection criteria

05

Accounting Considerations



Incentive Plans in a Volatile Market

Accounting for Incentive Plans

Overview

ASC 718 covers all share-based payments (SBPs):

- Stock options
- Restricted stock
- Share-settled stock appreciation rights (SARs)
- Cash-settled SARs
- Employee stock purchase plans (ESPPs)*
- Employee stock ownership plans (ESOPs)

Exclusions:

- Share-based payments (SBPs) in a business combination

*ESPP's have their own scope per ASC 718-50-15 that is separate from the broader provisions in ASC 718

Incentive Plans in a Volatile Market

Accounting for Incentive Plans

Overview

Primary objective of ASC 718

- Recognize the compensation expense, measured at fair value on the grant date over the vesting period.

Primary objective of ASU 2018-07

- Include in the scope of ASC Topic 718 SBPs to nonemployees for goods or services.

Incentive Plans in a Volatile Market

Accounting for Incentive Plans

Overview

Primary requirements of ASC 718

- Requires companies to calculate the fair value of stock options granted to employees and to expense that amount over the service period (generally the vesting period) as a charge to the income statement with a corresponding credit to shareholders' equity or a liability.
- SBPs can be classified as liabilities or equity.
 - Equity-classified awards are measured at grant-date fair value and are not subsequently remeasured.
 - Equity-classified awards:
 - Service conditions
 - Performance conditions
 - Market conditions
 - Liability-classified awards are remeasured to fair value at each balance-sheet date until the award is settled.
 - When SBP fails to meet any one of the three equity classifications

Incentive Plans in a Volatile Market

Accounting for Incentive Plans

Overview

Key definitions for equity classified SBP's

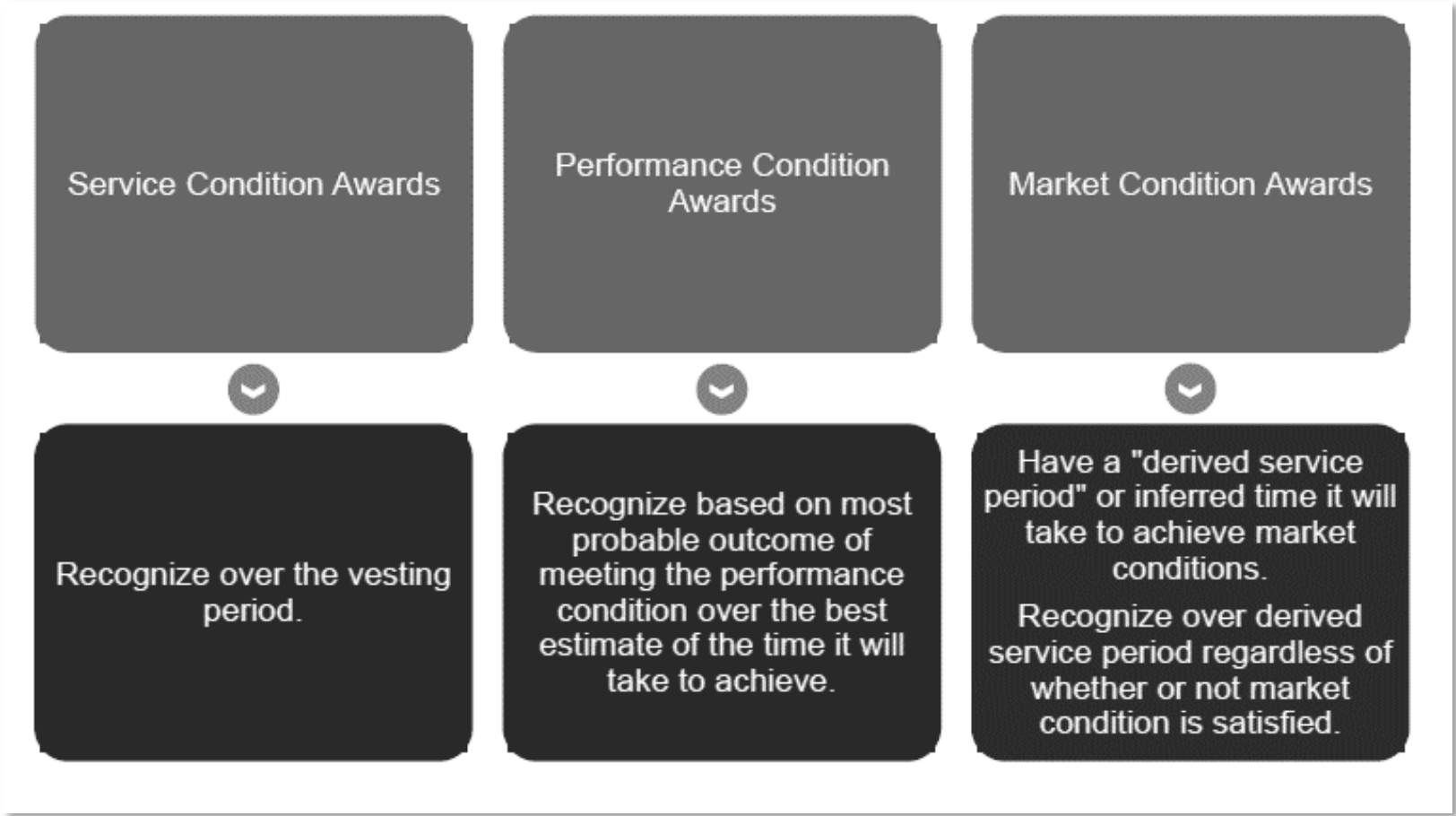
	Service Condition	Performance Condition	Market Condition
Definition	A condition affecting the vesting, exercisability, exercise price, or other pertinent factors used in determining the fair value of an award that <u>depends solely on an employee rendering service for an employer for the requisite service period or a nonemployee delivering goods or services to the grantor over a vesting period.</u>	A condition that affects exercisability, exercise price, vesting, or other relevant factors used in determining the fair value of an award that relates to both: <ol style="list-style-type: none">1. the <u>rendering of services or delivery of goods</u> for a specified period (either implicitly or explicitly) AND2. the <u>company achieving a specified performance target</u> that is defined solely by reference to the grantor's own operations or by reference to the grantee's performance related to the grantor's own operations.	A condition affecting the exercise price, exercisability, or other pertinent factors used in determining the fair value of an award under an SBP arrangement for employees or nonemployees that relates to the achievement of <ol style="list-style-type: none">1. a <u>specified price of the issuer's shares</u> or a <u>specified amount of intrinsic value</u> indexed solely to the issuer's shares, OR2. a specified price of the issuer's shares in terms of (a) a <u>similar equity security</u> (or securities), or (b) an <u>index of similar securities</u>.
Examples	<ol style="list-style-type: none">1. A stock option that vests if the grantee provides three years of service.2. A stock option that vests upon an employee's or nonemployee's death, disability, or termination without cause.	<ol style="list-style-type: none">1. A stock option that vests if a sales target of \$3 million is achieved.2. A stock option that vests as a result of achieving a target growth rate in earnings per share (EPS) that can then be exercised by nonemployees or employees.	<ol style="list-style-type: none">1. A stock option that becomes exercisable when the underlying stock price exceeds the exercise price by \$10.

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Accounting for Incentive Plans

Overview

Recognition of compensation expense



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Accounting for Incentive Plans

Volatility Considerations

Restricted Stock Units (RSUs): RSUs retain some value at vest regardless of market fluctuations (unless the stock price drops to zero).

Stock Options: Stock options carry more market risk since they only provide value when exercised if the stock price exceeds the strike price.

Employee Stock Purchase Plans (ESPPs): During market declines, ESPPs might become more attractive as employees can purchase shares at lower prices, potentially positioning them well for future rebounds.

Potential Courses of Action to Consider your Stock Based Compensation Program

- Repricing Options
- Equity Restructurings
- Cancellation of award and replacement with another award
- Change in participation threshold for profits interest

Modification Accounting Considerations

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Accounting for Incentive Plans

Modifications to Equity Classified Award

What qualifies for modification accounting under ASC 718? One or more of the following must not be true:

- Fair value of the modified award equals the fair value of the original award immediately before the modification
- Vesting conditions of the modified award are the same as those of the original award
- Classification of the modified award is the same as that of the original award

Vesting of service and/or performance conditions, results in four types of Modifications:

- Type I – Probable to Probable
- Type II – Probable to Improbable
- Type III – Improbable to Probable
- Type IV – Improbable to Improbable

Impacts the expense recognition and fair value considerations

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