

Key Takeaways

Post-Acquisition Integration Considerations – Tips and Traps

At the Comp Talks session on December 15, 2021, **Post-Acquisition Integration Considerations – Tips and Traps**, our panelists – Cooley partners Barbara Mirza and Alessandra Murata – discussed a variety of topics salient to a successful compensation and benefits integration effort in M&A. Here are some of the key takeaways summarized by Cooley lawyer Austin Holt:

An acquirer’s treatment of compensation and benefits issues can differentiate it from the pack. The current M&A environment is highly competitive, as companies are competing not just against traditional acquirers, but also against SPACs and the possibility of an IPO, given the similarly robust IPO market. Word travels quickly among founders and investors, and reputation can be currency in a competitive deal landscape.

Engaging and retaining talent in connection with an acquisition is often essential to capturing deal value. Employee retention has become increasingly challenging in the current market for talent, and unwanted turnover and loss of productivity can adversely impact the business and destroy value. Designing appropriate incentives to keep and motivate talent and successfully integrating compensation and benefits programs have important implications for the performance of the combined company and the overall success of a transaction.

Know the rules of the road and start early. It is vital to understand the transaction structure and value proposition, as well as the target company’s existing compensation and benefits arrangements and philosophy. Integration work should begin at the term sheet stage; however, keeping forms of offer letters and employment agreements fresh, and understanding benefit plan terms as they relate to onboarding future employees, are steps that an acquirer can take before a transaction begins.

Timely communications with executives around the terms of their future employment is key to retention. Executive buy-in and involvement in the integration process can also be critical to retaining other employees, avoiding misunderstandings and making sure communications to target employees are well received. Addressing target employee concerns – including retention and severance, and the logistics of health and welfare and 401(k) participation – through town halls and Q&As can help avoid employee morale issues and attrition.

Before finalizing new compensation arrangements for key employees, acquirers should carefully analyze the tax implications. Misunderstanding or mishandling these issues can result in negative tax consequences to the very individuals whom acquirers most want to retain.

Keep public disclosure in mind when negotiating compensation arrangements. Some transactions give rise to the need for a public filing that includes compensation-related

disclosure. Additionally, the parties should consider whether any target executives will become executive officers of the acquirer, potentially necessitating future public disclosures regarding their compensation, and key executives should be made aware of these disclosure obligations early in the process.

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