

## M&A: AFTER THE DUST SETTLES

*The third and final installment in a three-part series on Merger & Acquisition Transactions (“M&A”)*

Whew, the merger Transaction is closed and the dust has settled. Or has it? In our previous two segments on M&A (See [here](#) and [here](#)), we talked about preparing for and navigating the process. The path to M&A closure and integration can be a challenging one, fraught with minute details - to which critical attention must be paid. Our previous segments focused largely on getting from point A to B - how to take stock plan data from two companies and integrate it efficiently, with minimal pain and the ability to prevent or timely detect errors. Now that the deal is done, we move on to the final stages of ensuring a successful integration, the steps that occur largely after the Transaction is complete.

### **Employee/Participant Communication**

M&A may be one of the few areas where advance communication is not always possible. Even when permitted, what can be shared may be extremely limited, which makes advance communication challenging. In addition, if your company or the other company involved are publicly traded, certain communications regarding the Transaction may need to be disclosed publicly via a filing with the United States Securities and Exchange Commission (“SEC”).

While it may not be feasible to disseminate detailed information to stock plan participants in advance of the transaction close, for legal and other reasons, it is possible to put together a communication plan **BEFORE** the Transaction closes, even if you must wait until the Transaction Closing Date to execute the plan.

### *What to Communicate?*

When communicating M&A information to stock plan participants, put yourself in their shoes. Anticipate the questions that they will need/want to know. Such proactive planning can greatly minimize the number of inquiries that flow into the equity administration department. Typical questions employees/participants involved in an M&A Transaction include but are not limited to:

- What will happen to my stock/equity awards?
  - Address what will change for each type of stock/equity award outstanding, including number of shares due to a conversion ratio (if applicable), and any 'triggers', such as acceleration of vesting, cash payouts, etc.
  - Address unchanged variables, such as retention of original term and/or vesting schedule (if applicable).
  - Address implications on shares held outright, such as those previously acquired from an ESPP, stock option exercise, or award vesting.

- Don't forget former employees/participants who may have outstanding stock options, or previously vested shares.
- Where are my stock/equity awards?
  - Where can the participant access information about their stock plan holdings?
  - Are there changes to stock plan vendors/brokers? If so, what is the new process to access stock plan data?
  - Are there any nuances as to how stock plan data will appear in a participant account? For example, did the original grant date become the acquisition date for administrative purposes? Describe any changes to appearances of data that may be seen and misunderstood.
- When can I access my stock/equity awards?
  - Are there any restrictions on when/how participants can access my stock plan holdings, other than those contained in the terms of the award Agreement?
- What is the expected process for issuing stock/equity awards going forward?
  - Was there previously a routine grant practice, such as an annual grant? How is that expected to change in the new environment?
  - Are there any changes to eligibility requirements for granting stock/equity awards in the new environment?
- Where can the participant find additional information?
  - Consider creating an email address or designating a dedicated contact for employee/participant inquiries.
  - Consider establishing a 'library' of relevant information on an Intranet, broker online website or other source.

### *How to Communicate?*

Employee/Participant communication is an area where the means is just as important as the message. If you're making the effort to communicate with employees/participants, then invest equal time in ensuring you're utilizing effective communication channels.

Our favorite communication methods for M&A include:

- **Employee/Participant Statements:** the old saying that '*A picture is worth a thousand words*' applies here. It's important to explain any conversion ratio formula to employees/participants. In doing so, provide a visual of how this applies to their personal situation. A customized statement showing the 'before' and 'after', along with the 'middle' piece (the conversion calculation) can ensure employees/participants understand how the M&A action affects them individually.

- **FAQs:** M&A is an area where there tends to be many questions and also lots of rumors. With some planning and careful thought, you should be able to anticipate most questions. Answering them proactively, in the form of a Frequently Asked Questions or FAQ, will help employees/participants to find quick answers, as well as minimize the number of inquiries directed to the equity department. Tips for an effective FAQ include writing a list of all possible questions/scenarios, and then answering them completely and honestly with factual information and simple numerical examples. You may even consider grouping related questions together and creating 'categories' or a table of contents to simplify the process of finding an answer.
- **Meetings:** Meetings can be an effective forum for interaction during a confusing, stressful and critical time. While face to face contact can be beneficial in communicating, we at SOS also see a large number of clients utilize web tools to host meetings via conference call and webinar. This allows the Company to reach employees/participants globally in a timely and efficient way. Consider permitting employee/participant questions during these meetings - there may be an FAQ that you hadn't thought of that can be widely addressed.
- **Email Staging:** One common mistake is distributing large amount of information in a single, solitary communication. Many times the company thinks they've put all the information out there to be digested, so it must be understood - communication done right? WRONG!! Rather than putting ALL the communication eggs in a single basket (e.g. one communication), consider staging the communications such that you filter a bit of information at a time, and as you build one communication upon the previous one, you REMIND, REPEAT, REMIND, REPEAT. Repetition can be important in complex scenarios such as M&A, and multiple communications provide the opportunity to refresh previous information without being overwhelmed and confused.
- **Visual Aids/Guides:** If you are introducing new information, such as a new vendor, it may be helpful to have supplemental information available - such as a step by step guide, with screen shots, on how the employee/participant can activate/access their account. Other supplemental information could include a chart of commissions and important URLs, email addresses, phone numbers that participants can have readily available in a consolidated format.
- **Appropriate Staffing:** Responsiveness is a critical component of any communication plan. As much as you proactively communicate, there are bound to be questions and misunderstandings. Ensuring you are appropriately staffed to handle inquiries on a timely basis will help avoid backlog, stress, and a negative impression of the communication process.
- **Stick to the Sticking Points:** It is very critical that any information communicated to employees/participants during the M&A process, whether written, oral or visual, is consistent with the Transaction's legal documents governing the Transaction. While

numerous merger and acquisition transactions take place every day and may be similar, each transaction has its own set of unique facts and circumstances. Stick to the facts and always refer to the relevant sections of the Transaction documents. Remember, any incorrect, incomplete or inaccurate communication you distribute could create legal issues for you, your company and the other company involved in the Transaction. Consult your legal counsel (internal and external) for further advice and direction.

This completes our three-part series on M&A. For more information about how SOS can assist you in your M&A Transaction, contact your SOS Account Manager or see the contact information below.

### **About Stock & Option Solutions, Inc. (“SOS”)**

Founded in 1999, with headquarters in Campbell, California, SOS is a leading stock administration staffing, consulting and outsourcing firm within the equity compensation marketplace. SOS provides interim & permanent placement, expert project resources, and total outsourcing solutions. To learn more you can visit us online at <http://www.sos-team.com> or call us at 888-SOS-0199.