

CORPORATE REORGANIZATIONS AND GLOBAL SHARE PLANS

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Agenda

- Corporate Reorganizations - Introduction
- Equity Plan types to be considered
- Compliance issues and other dependencies
- UK Case Study
- US Case Study
- Issuer Checklist
- Questions

Corporate Reorganizations – A Primer

“Any Event that Results in a Significant Change in the Equity Base or Corporate Ownership of a Company”

- Our Assumptions
 - Publicly traded companies (post-IPO) or moving towards IPO
 - Subject to Securities Law (somewhere)
 - Company offers equity plans to their employees (somewhere)



Corporate Reorganizations – the types

- IPO (initial public offering)
 - Transition from privately to publicly held
- Market Offers
 - Tender offers
 - acquisitive - 3rd party
 - company self tender
 - odd-lot offers
- Mergers & Acquisitions
 - Cash merger
 - Stock (share) merger



Corporate Reorganizations – the types *(cont.)*

- Distributions
 - Stock Dividend
 - Stock Split
 - Tracking Stocks
 - Class Action Settlements
- Changes in Capitalization
 - Spin-off, Divestiture
 - Reverse Stock Split
 - Conversions, Redemptions



Equity Plans to consider

- Stock Options
- Restricted Stock
- Restricted Stock Units (RSU)
- Stock Appreciation Rights (SAR)
- Stock-settled SARs
- Performance Shares
- ESPPs



Compliance issues

- Legal - Securities Law
- Listing rules and requirements
- Tax
- Labour Law – Employee considerations
- Data Privacy
- Exchange Controls - currency



Other dependencies

- Country Specific Issues
 - Plan offerings and previous filings
 - Size of employee base
 - Taxation
 - Business and Plan Practices – past, present & future
- Corporate Practices
 - Plan chargebacks
 - Corporate tax vs. employee tax
 - Globally Mobile employees



Other dependencies (cont.)

- Conflicting Opinions
 - Case law vs. Interpretative considerations
 - Multi-jurisdictional issues
- Risk of Non-Compliance
 - Regulatory sanction
 - Financial
 - Impact to other business practices
 - Reputational Risk



UK Case Study – from private to public: QinetiQ IPO

- Leading international defence and security technology company
- Having some 11,500 employees in UK, US and Europe
- QinetiQ's evolution to flotation



QinetiQ – reasons for the Global Offer

- Allow sale by principal shareholders
- Create financial headroom
- Allow for use of ordinary shares as consideration in future acquisitions
- Assist in recruiting, retaining and incentivising key employees



QinetiQ – IPO

- 10 February 2006 initial public offering and listing on the London Stock Exchange
- Institutional offer
- Priority offer for eligible employees
- Free share offer for eligible employees



QinetiQ – employee share scheme aspects of flotation

Existing schemes – identification

- Existing approved options held by some 8,000 employees
 - exercise
 - tax
 - adjustments
- Shares held in employee benefit trust (“EBT”)
 - allocated and unallocated



QinetiQ – employee share scheme aspects of flotation

Existing schemes – prospectus disclosure

- Option/share calculations
- Issued ordinary share capital calculation including options
- Interests of directors and senior management
- Terms of schemes
- Option adjustments
- Lock-up arrangements
- Documents on display



QinetiQ – employee share scheme aspects of flotation

Existing schemes – communication

- HM Revenue & Customs (“HMRC”)
- Option holders
- Trustees of EBT
- Share plan administrators



QinetiQ – employee share scheme aspects of flotation

New schemes – identification

- Timing of adoption
- ABI and Listing Rule requirements
- New share option scheme
 - initial grant
- New approved Share Incentive Plan
 - initial free share awards
 - partnership and matching share awards
- New Employee Stock Purchase Plan and Stock Award Plan



QinetiQ – employee share scheme aspects of flotation

New schemes – prospectus disclosure

- New grants in conjunction with Admission
- Grants to directors and senior management
- Terms of the new schemes
- Documents on display
- Application for admission in relation to free share awards



QinetiQ – employee share scheme aspects of flotation

New schemes – communication

- HMRC
- Overseas lawyers
- Employees
- Share scheme administrators
- Trustees of EBT



QinetiQ – lessons learned

Practical points to remember:

- Timing
- Interaction with corporate aspects
- Prospectus Rules
- International implications
- Employee incentive!



US Case Study – merger of public companies

- U.S. Acquiring Company (“Atlas”) – common stock publicly traded on NYSE
 - Maker of pharmaceuticals
 - 15,000 Employees in 30 countries, including U.S., Australia, France, and U.K.
 - Offers options, restricted stock units and ESPP to employees on a worldwide basis
 - Files an EU Prospectus in France for Equity Plans
- U.S. Target Company (“Beta”) – common stock publicly traded on NASDAQ
 - Maker of medical equipment
 - 10,000 employees in 20 countries, including U.S., Australia, China, France, Malaysia and U.K.
 - Offers options, restricted stock, restricted stock unit and ESPP to employees on worldwide basis
 - Tax qualified plan offered in France



Case Study – treatment of equity

- At closing, Options & RSUs of Beta are converted into rights over Atlas stock using formula which applies the merger consideration per share
- For key employees of Beta, vesting accelerated on closing
- Atlas will now have employees in China and Malaysia which are new locations for company
- Beta ESPP shut down pre-closing



Case Study – step one

- Atlas Conducts Diligence Review of Beta's Options and RSU Programs
 - Get copies of all plans, ruling, filings, etc.
 - Determines headcounts/countries
 - Compares terms of Beta's plans and agreements to ensure no hidden or dissimilar terms and no administrative burdens
 - Review CICs and severance plans
 - Find out about past compliance (book accruals, clean up)



Case Study – step two

- Atlas Assesses Issues Resulting from Adjustment/Conversion of Beta Options and RSUs
 - Securities Law Considerations
 - Tax Concerns – particularly tax qualified plan issues
 - Labour/Entitlement
 - Data Privacy



Securities Law Compliance

- U.S. S-8 registration/assuming agreements
- EU prospectus directive 2003/71/EC
 - RSUs/Options as public offer of securities?
 - Article 3 and 4 exemptions
 - Do grantees have a choice with respect to the conversion? Offer of securities?
- Australian class order and loss of practice note 40
- Malaysian information memorandum
- China cashless exercise restriction



Tax concerns

- Conversion and adjustment may not be tax neutral. (In U.S., ISO/409A conversion tests; may need ruling)
- Provide notice of conversion of Beta awards to tax authorities (e.g., China (Notice 35), Malaysia)
- Conversion and adjustment and/or accelerated vesting may risk loss of tax-qualified status of Beta options/RSUs in France.
- *Note: Consider ruling to preserve qualified status and/or notification to optionee in advance so they can enjoy tax qualified exercise before closing. Qualified status of RSUs may be lost if accelerate prior to 2 years from grant.*



Other legal issues

- Beware of terms and promises in employment agreements/rules
- Works council - consultation vs. notification
- Privacy issues – include waiver?
- Terminations – Disclaimer/Release?
- Translations



Case Study – step three

- Atlas Prepares Action Plan for Integration of Equity Programs
 - Prepare for conversion/adjustment of awards
 - Integration of Databases
 - Transition of Plan Administrator
 - Communication to Grantees
 - Administration in New Countries (China, Malaysia)
 - Offering ESPP to former Beta employees



Stock Plan Administrator's Checklist for Integration of Acquisition Stock Plans

PRE-CLOSING:

- Determine as soon as practicable whether acquisition target has approved sub-Plans in any country (e.g., France/UK) and read plans to determine if change in control (CIC) disqualifies plan; if not, work with legal/tax to submit to authorities to obtain continued qualification of options/awards upon CIC
- Obtain copies of any CIC/Severance agreements or special grant/award/employee agreements that provide for accelerated vesting of options/awards upon CIC, e.g., 25% on date of merger, balance if terminated within 18 mos. of CIC, etc.



Checklist (cont.)

- Prepare pre-merger FAQ for target company to send to all employees prior to CIC with information about what will happen to their options/awards/shares post-CIC, as well as reiteration of how to tender their shares, if they haven't yet done so

POST-CLOSING:

- Obtain copies of all Plans and vest templates/schedules
- Obtain list of all optionees/award holders, including personal information needed to set up new accounts at plan broker
- Obtain list of options/awards outstanding on CIC date and convert using final merger ratio (watch for special tagging in fields to indicate GBapproved, FRapproved, expat, etc.)



Checklist (cont.)

- Calculate any accelerations provided by the merger agreement and/or special agreements (e.g., 25% of all options on merger for some or all) and check ISO Limitations
- Integrate all information into production database and balance to CIC date outstanding pre-split figures
- Provide totals to legal for use in filing the S-8 (generally 10-15 days post CIC) to register the shares underlying outstanding options/awards
- Send post-merger FAQ to target company to send to all employees with final conversion calculations and other information, including when and how they can enroll in new company's ESPP



Checklist (cont.)

- Determine whether grantees were required to sign and accept grant documents and get copies of same
- Obtain tax withholding schedules used by acquisition company, as well as HR and/or tax contact information for settling trades once S-8 is filed and window reopens
- Send all information to plan broker to set up accounts and populate assets



Questions?

Thank you for your participation



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