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Navigating the Executive Benefits Landscape
with The Todd Organization

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Executive Benefits: Steps to Take with a Merger, Acquisition, or Change-in-Control

WHEN COMPANIES ARE INVOLVED IN A MERGER, ACQUISITION, or other change-in-control, there are a host of competing and even conflicting issues that have to be addressed regarding executive benefit plans.

By anticipating and planning for such events, companies will be better able to cost-effectively retain and attract high-quality executives. They can manage plan assets better while also ensuring that future plans are optimally aligned to meet the needs of participating executives, shareholders, and the company in general.

As a practical matter, most companies today have at least one non-qualified retirement plan. Typically each of these plans is protected with a rabbi trust, which ensures that the benefits will be paid in the event of a change of ownership or even a change-in-heart by management. Executives rely on such trusts particularly when making voluntary deferrals and for assessing the overall quality of any non-qualified plan.

Key steps to take when a merger, acquisition, or change-in-control occurs include the following for each non-qualified plan.

- ***Review the provisions of the plans and the rabbi trust.*** **Many trust agreements have clear language that the plans are formalized, contractual obligations that need to be paid or kept in place in the event of a merger, acquisition, or change-in-control. A plan may stipulate that executives need to be paid out immediately or at a set time. Immediate or other vesting provisions may also kick in with a change-in-control. In order to determine their obligations, companies need to gauge these and other areas.**
- ***Assess the rabbi trust assets.*** **Some companies have financed executive benefit plans and in turn a rabbi trust, as a part of a general asset/liability strategy. Others have not. There is wide variance. By assessing the assets and the provisions of the trust, a picture will emerge about whether the assets are sufficient to pay the current benefits due. If there are different investments in the trust, there needs to be a determination about the order in which the various assets should be used to pay benefit obligations, if it becomes necessary to make those payments from the trust.**

continued on next page

Executive Benefits:
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- ***Interview the trustee.*** **Companies are best served by working with financial institutions that have demonstrated experience on the complex administrative, financial, and legal issues involving rabbi trusts. The trustee's performance, and overall level of expertise and comfort with that trustee, will be major factors in determining how to structure plans going forward.**
- ***Consider how best to add executives from the acquired company.*** **It obviously makes good business sense to keep high-quality, value-adding executives from the acquired company. Furthermore, non-qualified plans are one of the most valuable assets that many executives have. To prevent alienating these executives, companies should be able to demonstrate that the executive will at least remain whole on his future executive benefits. This may involve an immediate payout, continuance of the old plan, attractive provisions in a new plan, or a combination of these approaches. These issues must be addressed on both a group and individual basis.**
- ***Determine how best to manage cash flow of terminated executives' plans.*** **Companies need to be strategic in how they manage these assets. Sometimes it makes sense to terminate a former executive's plan. In other situations it may make sense to keep the plan in place so that participants' assets can continue to grow on a tax-advantaged basis. In addition to financial and legal considerations, companies need to think through the ramifications on morale for the remaining executives and the potential costs of legal challenges.**
- ***Educate Management and the Board.*** **There should be a designated point person at the company for integrating and managing executive benefit plans who will report on developments on these matters to company management and the Board of Directors.**

The Todd Organization has numerous experts available to help companies address how executive benefits are impacted by a merger, acquisition, or other change-in-control. For more information about these programs, please contact your Todd consultant.

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