

COMPENSATION AND BENEFITS M&A PRACTICE SOLUTION



Our Team

Orrick has an elite and pragmatic team of Compensation and Benefits lawyers and legal analysts who are experts in the most important areas of employee benefits law. We are a one-stop destination practice for a wide range of clients, including financial institutions, investment managers and other financial service providers, as well as many public and private companies. Because of our expertise and experience, we often provide advice on all facts of employee benefits issues in M&A transactions – a “start to finish” approach to providing employee benefits solutions.

Our Mergers and Acquisition Support Practice

Mergers and Acquisition Compensation and Benefits Practice. During the course of each M&A transaction, unique compensation and benefit issues will arise that can only be resolved with specialized knowledge and extensive experience. Because of the in-depth knowledge and expertise and extensive experience of our team members in these matters, we are able to effectively and efficiently advise our clients across all the broad spectrum of compensation and benefit issues that might arise in the M&A context, including issues related to executive compensation, Code Section 409A analysis, Golden Parachute analysis, domestic and global equity compensation, health and welfare plans, and qualified and non-qualified retirement plans. In each M&A transaction, we work closely with the corporate team to provide practical legal solutions to compensation and benefits issues that fit within the business parameters of the transaction. In addition to the sale of private companies, we have extensive experience representing by the buyer and seller in public-public transactions, including transactions structured as tender offers.

Special M&A Counsel. In recognition of the special nature and complexity of the compensation and benefits issues that are involved in a M&A transaction and the related post-closing integration process and our relevant expertise, we have been engaged by certain clients to be their special counsel with respect to compensation and benefits matters in connection with M&A transactions. In such instances, we work jointly with the corporate counsel responsible for the overall transaction, but remain responsible for the compensation and benefits issues that might arise in connection with such M&A transactions. We find this process works particularly well to keep continuity for clients that are in acquisition mode.

Definitive Agreement. The structure of the M&A transaction can have a significant impact on the compensation and benefits issues that might arise. Thus, for example, the compensation and benefit issues in a sale of assets will differ from the issues in a stock sale. Our team has the necessary experience to identify and resolve the different compensation and benefits issues that are associated with the different M&A transaction structures. We employ our expertise and knowledge to negotiate the terms of the definitive agreement so as to obtain the most favorable position for our clients based on an understanding of the appropriate market terms for each provision and an application of the relevant business terms of the M&A transaction.

Equity Compensation. A key issue in any M&A transaction is the treatment of outstanding equity compensation. True to our “one-stop shopping” practice, we, unlike many other law firms, have the expertise and capability to advise our clients on the treatment of both U.S. and global equity. We think this substantially simplifies the process of dealing with equity compensation. We have experience in structuring both cash-outs and assumptions of outstanding equity awards, including complex situations such as transactions where the consideration is a mixture of cash and stock and transactions with earn-outs. Following the closing of an M&A transaction, we can provide continuing assistance with respect to establishing new equity programs or revising existing equity programs, whether U.S. or global, for the purpose of providing the new employees with an opportunity for equity ownership. We can also provide advice and recommendations on other post-closing employee retention tool.

Golden Parachute Analysis. Our internal team members have extensive experience in analyzing the impact of the Golden Parachute rules under Code Sections 280G and 4999 on payments made in connection with a M&A transaction. We also assist private company sellers in preparing the requisite stockholder approval materials to cleanse payments to avoid any adverse tax consequences under the Golden Parachute rules.

Analysis of Employee Benefit Issues. In representing the buyer in an M&A transaction, we will analyze the compensation and benefits plans maintained by the target for legal compliance. With respect to any compliance issues, we will evaluate the potential exposure and make recommendations on go-forward actions. We also assist clients in evaluating the level of benefits provided under the target company’s compensation and benefit programs against market-standards and the buyer’s compensation and

Orrick’s Compensation & Benefits team is recognized for the following:

- Being a destination practice for clients
- Offering a single point of contact for the highest quality compensation and benefits advice
- Providing start to finish comprehensive solutions on a fixed-fee basis



benefits programs. This process allows buyers to determine how to integrate the new employees into their existing workforce. When representing sellers, we will evaluate the scope of any compliance issues and the impact, if any, that such issues will have on the M&A transaction. We also assist sellers in taking any necessary corrective action prior to the consummation of the M&A transaction.

Post-Closing Human Resources Integration Assistance. A key element of any M&A transaction is the successful integration of the employees and the related compensation and benefit programs leading up to and following the closing of the M&A transaction. During the course of any M&A transaction, we will highlight the potential post-closing integration issues and assist clients in the designing and implementing an effective integration plan, including drafting and negotiate new employment agreements, integrating retirement plans, post-closing clean-up of terminating retirement plans, health and welfare plan integrations and addressing day-today compensation and benefits matters. We assist clients on preparing the relevant employee communications related to the M&A transaction. We can also assist with working with third-party service providers to further the integration process.

For further information regarding our health and welfare plan practice, please contact Juliano Banuelos at 415-773-5961 or sdownie@orrick.com. For further information regarding Orrick's compensation and benefits practice, and for descriptions of other areas of our practice, such as executive compensation, health and welfare and global equity, please contact Jonathan Ocker, compensation and benefits practice group chair, at 415-773-5595 or jonocker@orrick.com.