

## Executive Compensation and Employee Compensation Programs

### EXISTING CORPORATE CLIENTS

For our base of regular corporate clients, our role is to help design, draft and implement programs that will appropriately attract and motivate employees while satisfying complex tax and regulatory constraints and assuring favorable accounting treatment for the corporation. The scope of our involvement ranges from drafting and negotiating employment contracts and “golden parachute” agreements (and creating “rabbi trusts” where appropriate), to designing stock options, restricted stock and other creative equity-based compensation programs, long-term incentive plans and deferred compensation plans.

Over the years we have, on behalf of clients, conducted contract negotiations or confronted contract issues involving many of the senior executives in American industry who have become household names. In addition, while it is not our principal focus, we occasionally represent prominent executives individually in negotiating their contracts with their corporate employers. We perform executive compensation services for all of our major clients, and regularly meet with senior management of these clients to advise them on new design or regulatory developments in this area.

Because financial institutions (depository institutions, investment banks, insurance companies and other asset managers) represent one of the Firm’s major client bases, we are often presented with unique compensation issues that require a deft balancing of advice regarding market practice, corporate governance, tax, securities laws and – more recently – a raft of government regulatory initiatives. The intellectual capital and relationships of a few key persons at many financial institutions have the potential to produce outsized revenues and, as a result, compensation programs for these organizations must be designed to reward a combination of individual performance and business unit success, while still promoting firmwide stability and growth. These types of executives are highly marketable and so must believe that they are being fairly rewarded in a way that reflects their individual contribution – one-size rarely fits all. As a consequence, we work regularly with a diverse collection of financial institutions (together with their compensation consultants and risk managers) to provide tailored advice regarding appropriate equity, quasi-equity, cash and deferred compensation programs at various levels and groups – from the CEO to a first-year analyst.

### MERGERS AND ACQUISITIONS

We play a critical role in the Firm’s extensive mergers and acquisitions practice. While our role can vary significantly from deal to deal, it is hard to imagine any deal that does not have some significant employee-related issues, and there are a few generic observations about deals that we can make from our perspective:

*Representing Sellers.* If we represent the selling company, our principal involvement might be to focus on the effect of the transaction on management and employees. Issues may include:

- *Golden Parachute and Retention Programs.* We may need to develop programs that will help assure that key management and other employees remain with the selling company through the closing date.
- *Severance Programs.* We might assure that employees are appropriately protected in the event of a post-transaction downsizing.
- *Transition Issues.* It may be important to motivate management to continue with the company after the merger. One example would be a “merger of equals.”

*Representing Buyers.* If we represent the buying company, we will often be focused on transition issues, including the development of replacement equity and severance protection programs for key management figures.

*Special Issues in Representing Financial Buyers.* One of the Firm’s major client groups is a significant number of leveraged buyout firms. When we are representing financial buyers in LBO transactions, it is critical to the success of the LBO to assure that the senior management team is intact and highly motivated. One of our areas of special expertise is working with our clients to design, negotiate and implement compensation and stock ownership packages that achieve the client’s goals of retaining and motivating the management team, on whom the success of the buyout largely depends.