Award Modifications: Key Considerations

Important: This table provides a general discussion of the considerations that apply to common modifications that may be made to options and awards. In many cases, these determinations are highly dependent on the specific facts and circumstances of the modification. Consult your own advisors before making any decisions.

Modification	Financial Cost	Shareholder Approval Required	Award Holder Consent Required[1]	Tender Offer Compliance[2]	Form 4 Required	Tax Considerations
Reducing or Eliminating Performance Targets	Value of modified option/award	No	No	No	No	Disqualifies awards from 162(m) grandfather
Repricing (Straight)	Original option cost plus incremental cost of new option	Usually[3]	For NQSOs, only if involves reduction in benefits (e.g., extended vesting, holding period) Consent generally required for ISOs due to potential loss of tax benefits	Depends on: • Number of offerees • Whether optionee consent is required	Yes	Disqualifies options from 162(m) grandfather ISO considerations[4]
Repricing (Value for Value)	Original option cost only (no additional cost)	Usually[3]	Yes	Depends on number offerees	Yes	Disqualifies options from 162(m) grandfather ISO considerations[4]
Exchange Options for RSUs	Original option cost plus incremental cost of new option (there may be no incremental cost if exchange is on a value-for-value basis)	Usually[3]	Yes, if involves reduction in benefits, which is usually the case	Depends on: • Number of offerees • Whether optionee consent is required	Yes	Disqualifies options from 162(m) grandfather ISO considerations[4]
Acceleration of Vesting (Not in Connection with Termination)	No additional cost, but any unamortized expense must be fully recognized in period of acceleration[5]	No	Generally no, but may be necessary for ISOs due to possible loss of preferential tax treatment	No	No	Can cause ISOs to exceed $100K limit

Modification	Financial Cost	Shareholder Approval Required	Award Holder Consent Required[1]	Tender Offer Compliance[2]	Form 4 Required	Tax Considerations
Acceleration of Vesting (upon Termination)	Value of modified option/award	No	Generally no, but may be necessary for ISOs due to possible loss of preferential tax treatment	No	No	Can cause ISOs to exceed $100K limit
Extension of Post-Termination Grace Period[6]	Original option cost plus incremental cost of new option	No	Generally no, but may be necessary for ISOs due to possible loss of preferential tax treatment	No	No	Treated as cancellation and regrant of ISOs
Extension of Contractual Option Term	Original option cost plus incremental cost of new option	No	Generally no, but may be necessary for ISOs due to loss of preferential tax treatment	No	Yes	Permissible under 409A only if option is underwater Treated as cancellation and regrant of ISOs

Disclosures

For all types of modifications, the following disclosures may be necessary:

- ASC 718: Material modifications that occurred during any year presented in the income statement must be disclosed in the footnotes to the financial statements. The disclosure should discuss the terms of the modifications, number of award holders affected, and the total compensation cost resulting from the modification.
- Proxy Statement: When awards held by named executive officers are materially modified, the modification must be discussed in the Compensation Disclosure & Analysis statement. Some modifications may also trigger reporting in the tabular disclosures related to executive compensation.
- Form 8-K: Material grants issued to named executive officers are reported on Form 8-K. Where modifications to these grants are material and are not consistent with the previously disclosed terms of the awards, the modifications must also be reported on Form 8-K.
- Form 10-Q/K: All grants issued to named executive officers (NEOs) and material grants issued to executive officers other than NEOs are filed with either Form 10-Q or 10-K. Amendments to previously filed grants should also be filed with Form 10-Q or 10-K.

Notes:

[1] We have assumed that the plan and award agreement require consent only for changes that adversely affect the award holder. Review the plan and agreement applicable to any awards to determine if consent is required in other circumstances.

[2] The SEC requires modifications to comply with the requirements for tender offers when award holders are asked to give up some of their rights in exchange for the modification (e.g., the award holders must agree to forfeit some of the shares in their award, accept additional or extended vesting conditions, give up rights to preferential tax treatment). Tender offer compliance generally entails preparing and filing specified documents with the SEC, including Schedule TO, and providing option holders with at least 20 days in which to decide whether to participate in the repricing.

[3] For public companies, shareholder approval is not required if plan expressly permits repricing or option exchanges without such approval. Private companies may have more leeway, provide the plan does not expressly prohibit repricing or option exchanges.

[4] ISO considerations include:

- To preserve the ISO status of options for which the offer to reprice is not accepted, employees should be required to accept the offer within 30 days or less.
- ISOs that are repriced are considered to have been cancelled and regranted. The new grant must comply with all ISO requirements, including the $100,000 limit, and the two-year statutory holding period will be measured from the date the new grant is issued.
- Where ISOs are exchanged for RSUs, employees who participate in the exchange will give up the preferential tax treatment afforded to ISOs

[5] Accounting treatment may vary for acceleration of vesting of options that are underwater. See discussion in Accounting for Equity Compensation in the United States (section 8.2.1).

[6] Assumes extension occurs upon termination of employment. Also assumes extension is not beyond original contractual term of the option.