Did You Know?

Understanding market norms for severance payouts can help you structure a fair and acceptable transition

Main Data Group's change-in-control (CIC)/severance report

Providing benefits to executives due to termination without cause—in connection with a CIC or otherwise—is among the most fraught of compensation committee decisions. It will demand a fair amount of time on the part of the board and the senior HR team and can be unexpected. The size of these benefits can become a source of everything a company wants to avoid during a time of transition or restructuring, from negative publicity to shareholder litigation. Further, Internal Revenue Code (IRC) Section 280G can impose a punitive 20% excise tax on "excessive" CIC payments. At the same time, companies are ultimately ill-served by denying what may be appropriately due to a terminating executive, as they may have contributed considerably to corporate success over a sustained period and a weak severance package when they depart could send a poor message to the incoming leadership.

Successful corporate termination programs thread this needle carefully, balancing public opinion and tax consequences against the need for a smooth and amicable executive transition. Acquiring knowledge of competitive norms is crucial to this process. Among the questions that companies must address in connection with a CIC are:

- **What conditions constitute a CIC?** Is it acquisition of a certain percentage of shares or assets? A board takeover, corporate merger, or liquidation?
- **What triggers the payment of benefits (cash or equity)?** Is the CIC itself a trigger, or must the executive be terminated in connection with the CIC? Can an executive voluntarily resign (constructive termination) and still receive benefits?
- **To what extent is the executive protected against IRC Sec. 280G tax consequences?**

And for any type of executive termination in the absence of cause:

- **Does the executive receive cash severance?** If so, what is the basis (salary, bonus, or both) and what is the multiple?
- **How are interrupted performance cycles handled?** Does the executive receive any sort of annual bonus or performance share/unit payout?
- **What happens to unvested equity, cash-based long-term incentive, or unexercised stock options?** Does the executive receive anything if the termination event occurs before the vesting date? Does he or she have an opportunity to exercise outstanding options and, if so, over what period?
- **What terms must the executive observe to receive benefits?** Are payments contingent on noncompete or non-solicitation prohibitions? If so, how long are these in effect?

The Main Data Group (MDG) CIC/severance report provides the industry's most comprehensive one-stop source for this information, derived from proxy disclosures, 10-K and 8-K filings, and other public documents. The data includes detail for each Named Executive Officer (NEO) and for each termination scenario (CIC or severance without cause in the absence of a CIC), as well as side-by-side comparisons of the CEO's benefits to those of other NEOs.

Contact us by phone at 408-776-1000 or email info@maindatagroup.com to learn more about the MDG CIC/severance report.

About Main Data Group

Main Data Group is a provider of executive compensation benchmarking and corporate governance analytics. Its mission is to empower executive compensation professionals with comprehensive total rewards and corporate governance information in an affordable, easy-to-use online service. For more information contact us at info@maindatagroup.com or by filling out our contact form at www.maindatagroup.com.