Decisions, Decisions: Choosing Choice and Offering Employee Choice Plans

Lori Clancy, Oracle
Billy Vitense, Starbucks
Denise Glagau, Baker & McKenzie
Larry Reynolds, Fidelity Stock Plan Services
Agenda

- Welcome and Introductions
  - Company backgrounds

- Prevalence of Choice Programs

- Oracle and Starbucks Choice Programs
  - Objectives and program design
  - Process summary and communication strategy
  - Election history

- Tax and Legal Considerations

- Other Choice Program Examples

- Key Takeaways
COMPANY BACKGROUNDS
Oracle

Company Background

- 2nd largest software company in the world
- Develops and markets computer hardware systems and enterprise software products
- Founded in 1977; IPO in 1986
- Headquarters in Redwood City, CA
- Over 95 acquisitions in the last 10 years
- Larry Ellison owns 25% of outstanding stock

Award Philosophy

- 95% of equity awards granted at annual focal in July
- Prior to July 2014, granted only NQ stock options
- Annual equity grant now allows for choice between options and RSUs
- VP and above may elect to defer RSU awards

Key Statistics

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Revenue</td>
<td>$38.3B</td>
</tr>
<tr>
<td>Total Employees</td>
<td>133K</td>
</tr>
<tr>
<td>Employees Receiving Equity</td>
<td>25K</td>
</tr>
<tr>
<td>Stock Delivered Globally In</td>
<td>49 countries</td>
</tr>
<tr>
<td>% U.S. Based</td>
<td>60%</td>
</tr>
<tr>
<td>% Global (Non-U.S.)</td>
<td>40%</td>
</tr>
</tbody>
</table>

Award Types:

- Stock Options
- Yes
- Restricted Stock/Units
- Yes
- Performance
- Yes
- Employee Stock Purchase Plan
- Yes
Starbucks

Company Background
- Founded in 1971; Howard in 1987; IPO in 1992
- Headquarters in Seattle, WA
- Over 25,000 retail locations in over 75 countries
- Starbucks Siren – Roastery and Special Reserves
- Princi, Evolution Fresh, Teavana, Tazo, Seattle's Best

Award Philosophy
- Pay for performance
- Shared success
- Shareholder engagement
- Social impact and responsibility
  - Opportunity youth, college achievement, military and refugee hiring

Key Statistics

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Annual Revenue</td>
<td>$21.3B</td>
</tr>
<tr>
<td>Total Partners (green apron)</td>
<td>&gt; 300K</td>
</tr>
<tr>
<td>Partners Receiving Equity</td>
<td>162K</td>
</tr>
<tr>
<td>Stock Delivered Globally In</td>
<td>22 markets</td>
</tr>
<tr>
<td>% U.S. Based</td>
<td>70%</td>
</tr>
<tr>
<td>% Global (Non-U.S.)</td>
<td>30%</td>
</tr>
</tbody>
</table>

Award Types:
- Stock Options Yes
- Restricted Stock/Units Yes
- Performance Yes
- ESPP (S.I.P.) Yes
PREVALENCE OF CHOICE PROGRAMS
Industry Usage of Choice Plans

- Choice is limited
- Only 6% of companies surveyed allowed recipients to choose award type
  - Up from 3% in 2013
- Majority offered restricted stock/units and stock options
- Few offered performance awards or cash awards

ORACLE AND STARBUCKS CHOICE PROGRAMS
Oracle Choice Program

Overview and Purpose

- Rolled out for July 2014 annual grant
- Approximately 25,000 employees eligible worldwide
  - Certain locations not allowed choice, e.g. Australia, Russia
- Choices:
  - 100% stock options
  - 100% RSUs converted at 1:4 from options
  - 50% options, 50% RSUs
  - Default is 50/50 for VP+; 100% RSUs for below VP
  - All selections vest 25% over 4 years
  - U.S. employees $216K+ eligible for deferral
  - Top 5 execs excluded from choice due to grants with performance conditions
Starbucks Choice Program

Overview and Purpose

- Looking to roll out in September 2017 for November award
- Approximately 1,100 employees eligible worldwide
- Choices:
  - 100% stock options
  - 100% RSUs
  - 50% options, 50% RSUs
  - Default will be 50/50
  - Stock options and RSUs would vest 25% per year over 4 years
- SLT would not be eligible for choice and maintain 60/40 mix
- Delayed a year as concerned about choice remorse
  - Creation of Leadership Rewards site – educate, educate, educate
Oracle Choice Program

Process Summary

- Employee notified via email of proposed equity award; instructions provided for login to secure internal site nicknamed “Choice App”

- After logging in to Choice App:
  - Employee required to watch video which defines options and RSU awards, and differences between the two
  - Required to review short country-specific tax supplement
  - Encouraged to read attached FAQ
  - Indicate choice and receive verification email

- Employee able to make changes during 3-week open election period

- After period close, file approved by Comp Committee on grant date, and forwarded to stock services for processing
Communication Strategy

- Email (with excerpt of FAQ) sent to manager 2 weeks prior to opening of Choice App
  - Manager encouraged to communicate recommended equity amount and explain that employee is now offered a choice between equity types
  - Reinforces that award is still “recommendation” and requires Board approval
  - Manager cautioned NOT to provide advice or recommendation regarding taxes or choice

- Email confirmation sent to employee after each choice (can revisit and change up until deadline)

- Employee receives congratulatory email notifying of equity award and containing link to Choice App

- After approval by Comp Committee of BOD, email sent to employee:
  - Congratulations! Based on the preference of equity award you communicated earlier to Oracle, Oracle Corporation hereby grants you [XXX units of restricted stock, and a stock option to purchase XX shares of common stock, with an exercise price of US $XX per share and grant date of XXX].
  - Includes links to Plan and Prospectus and 10-K, and explains timing and process for receiving and accepting grant(s); includes notification that acceptance of grant conveys data privacy transfer consent
Starbucks Leadership Reward Site
Starbucks Leadership Reward Site
Starbucks Leadership Reward Site

Leadership Stock Financial Planning

The following articles are licensed from mystockoptions.com to provide you with additional information to help plan and manage your stock-based compensation.

- Ten Financial-Planning Rules You Should Know about Restricted Stock & RSUs
- Ten Financial-Planning Rules Everyone with Stock Options Needs to Know
- Year-end Strategies for Restricted Stock, RSUs, and Performance Shares: Seven Ideas to Consider
- Stockbrokers’ Secrets: Retirement Planning with Stock Compensation
- Taking an Overseas Assignment: Stock Compensation for Internationally Mobile Employees (Part 1)
- Taking an Overseas Assignment: Stock Compensation for Internationally Mobile Employees (Part 2)
- What Are the Biggest Mistakes with Restricted Stock or RSUs That I Can Make on My Tax Return, & How Can I Avoid Them?
Oracle Choice Program

- Election history
  - In 2014 and 2015, Oracle allowed Choice for all grants
  - In 2016, Oracle eliminated Choice on new hire and retention grants, issuing only RSUs
  - Choice is now only offered with the annual grant in July

<table>
<thead>
<tr>
<th></th>
<th>2014</th>
<th></th>
<th>2015</th>
<th></th>
<th>2016</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># grants</td>
<td>%</td>
<td># grants</td>
<td>%</td>
<td># grants</td>
<td>%</td>
</tr>
<tr>
<td>100% Options</td>
<td>3,217</td>
<td>17%</td>
<td>3,168</td>
<td>15%</td>
<td>1,203</td>
<td>5%</td>
</tr>
<tr>
<td>100% RSUs</td>
<td>13,250</td>
<td>68%</td>
<td>15,683</td>
<td>73%</td>
<td>18,983</td>
<td>80%</td>
</tr>
<tr>
<td>50/50</td>
<td>3,000</td>
<td>15%</td>
<td>2,558</td>
<td>12%</td>
<td>3,584</td>
<td>15%</td>
</tr>
<tr>
<td>Total</td>
<td>19,467</td>
<td>100%</td>
<td>21,409</td>
<td>100%</td>
<td>23,370</td>
<td>100%</td>
</tr>
</tbody>
</table>
Oracle Choice Program

RSU Deferrals

● U.S. employees $216K+ eligible for deferral

● Deferral timing choices:
  – Separation from Oracle, or
  – 5 years from grant date or separation from Oracle, whichever comes first, or
  – 10 years from grant date or separation from Oracle, whichever comes first

● Deferral payment choices:
  – Lump sum payment, or
  – Quarterly payments for 5 years, or
  – Quarterly payments for 10 years

● Out of approximately 1,800 eligible, less than 3.5%, or 68 employees, elected deferral
Oracle Choice Program

RSU Deferral Example

- Employee eligible for 16,000 option shares
- Elects to receive RSUs; awarded 4,000 RSUs \((16,000/4)\)
- Defers 5 years from grant date with 10-year quarterly distribution
- Employee pays Social Security and Medicare tax at vest
- **Terminates 1 year after grant**
  - 1,000 RSUs vested and deferred \((4,000/4)\)
  - Receives quarterly distribution of 15 shares
    - 1,000/40 quarters = 25 shares
    - 40% tax withholding = 10 shares netted for taxes (only federal and state taxes applied at distribution)
  - Each quarterly distribution has a different tax basis
  - Dividends accrued for undistributed shares
TAX AND LEGAL CONSIDERATIONS
Tax Issues

- Need to review tax treatment for all award types that will be offered to employees
  - May be more costly and time-consuming

- Certain award types may be subject to more favorable tax treatment than others, for example:
  - Options in Canada may benefit from 50% tax exemption while other awards do not
  - In the U.K., tax-advantaged programs exist for options (but generally not other award types)
Tax Issues, continued

- Different award types may have very different tax treatment
  - Belgium—options are taxed at grant or exercise depending on when they are accepted, while RSUs are taxed at vesting

- Tax withholding/reporting obligations may be different depending on award type

- Social insurance obligations may be different depending on award type
  - Impacts both employer and employee

- Differences in tax treatment, withholding/reporting, and social insurance obligations may be more pronounced if choice is between equity and cash award
Tax Issues, continued

- Company will need to determine whether to offer choice program or offer different choices/alternative awards or just grant one award type

- Company should (must) provide tax information regarding each award type so that employee can make informed decision
  - Even more crucial where there are differences in treatment and applicable obligations
Securities Law Issues

- Need to review securities law issues for all award types that will be offered to employees
  - Again, may be more costly and time-consuming

- In some countries, one award type may not be desirable for securities law reasons, for example:
  - RSUs in Australia cannot benefit from same self-executing exemption from prospectus/disclosure requirements that apply to stock options
  - Options in Indonesia may need to be restricted to cashless exercise to avoid securities filing
  - Options in Japan may trigger onerous securities filing (if 50+ offers)
Securities Law Issues, *continued*

- “Offer” may be considered to be made at the time the choice between awards is offered (and possibly again at grant or at a later point)
  - Securities filing or other requirement may be triggered at that time, as well as at the later points (e.g., Australia, Malaysia)

- In some countries, certain award types are not usually subject to securities law compliance because the employee does not provide any consideration for the award or the shares (e.g., most RSUs)
  - Choice element may alter this view of the award as the employee may be seen to be “paying” for one type of award by relinquishing the other (e.g., EU, Japan)
Securities Law Issues, *continued*

- Company will need to determine whether to offer choice program (and deal with any filings/requirements) or offer different choices/alternative awards or just grant one award type.

- Company should consider providing disclosures regarding each award type so that employee is aware of consequences of choice.
  - E.g., if the company is going to impose a cashless exercise restriction on options to avoid securities filing, employee may prefer to receive RSUs in order to hold shares.
Exchange Control Issues

- Need to review exchange control issues for all award types that will be offered to employees
  - Again, may be more costly and time-consuming

- Employees may be subject to more significant exchange control requirements for certain awards (e.g., options) versus other awards (e.g., RSUs)

- Company may need to impose special terms on one award type and not the other to comply with exchange control rules

- Company should consider providing disclosures regarding each award type so that employee is aware of consequences of choice
  - E.g., if the employee would be required to take onerous steps to exercise options or may be subject to limits on such investments, employee may prefer to receive RSUs
Labor Law Issues

- Providing employees with choice program materials may create entitlement to award (or create impression that employee is entitled to award once choice made)
  - Clear communications and robust disclaimers are needed to mitigate risk
General Issues

● “Remorseful employee” problem – employee could ask for damages/to be made whole for having made “wrong” choice

● Some mitigation strategies:
  – Clear and comprehensive communications
    ● Examples and/or calculators
    ● Tax information for each award type offered
    ● Translations of choice program materials
  – Appropriate disclaimers and indemnity clause in choice program materials
  – Hard-copy documentation of choice
EXAMPLES OF CHOICE PLANS
### Examples of Choice Plans

<table>
<thead>
<tr>
<th>Coach</th>
<th>3M</th>
</tr>
</thead>
<tbody>
<tr>
<td>- Adopted in 2007</td>
<td>- Adopted in 2015</td>
</tr>
<tr>
<td>- Fairly broad based in nature: “corporate” employees and a portion of “field” employees</td>
<td>- Eligible participants are managers, directors, and above globally</td>
</tr>
<tr>
<td>- Plan was historically options based; looking to diversify after market conditions changed</td>
<td>- Viewed the Choice program as a way to stay competitive from a compensation perspective</td>
</tr>
<tr>
<td>- Choice of 100% RSUs, a mix of options and RSUs, or 100% options</td>
<td>- Choice of 100% RSUs, a mix of options and RSUs, or 100% options</td>
</tr>
<tr>
<td>- Annual election with a default; previous elections do not carry over</td>
<td>- Annual election with a default – previous elections do not carry over</td>
</tr>
<tr>
<td>- From 2007-2015, between 77%-88% of participants made an election</td>
<td>- In 2015, 82% of participants made an election</td>
</tr>
<tr>
<td>- Conducted an employee survey prior to launching Choice program to determine employee interest</td>
<td></td>
</tr>
</tbody>
</table>
CONCLUSION
Key Takeaways

- Choice program promotes a better understanding and appreciation of equity grants and overall program

- Despite the complexities of choice elections, concise and simple communications are critically important
  - Need to make sure enough content is provided to allow grantees to make an informed decision

- Choice can be more challenging for employees due to communications/tax/securities and other regulatory complexities
  - Consider targeted communications for certain non-U.S. recipients based on these complexities

- If RSU deferral is offered, be prepared for challenges
Thank You

Lori Clancy  
Oracle Corporation  
lori.clancy@oracle.com

Denise Glagau  
Baker & McKenzie LLP  
Denise.Glagau@bakermckenzie.com

Billy Vitense  
Starbucks Corporation  
Bvitense@starbucks.com

Larry Reynolds  
Fidelity Investments  
lawrence.reynolds@fmr.com

FOR CEP and NASPP SYMPOSIUM ATTENDEES ONLY.  
CEP, NASPP, Oracle, Starbucks, Baker & McKenzie, and Fidelity Investments are not affiliated.  
Fidelity Stock Plan Services, LLC.  
793076.1.0