

13TH ANNUAL CEP AND SILICON VALLEY NASPP SYMPOSIUM

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SANTA CLARA UNIVERSITY • CERTIFIED EQUITY PROFESSIONAL INSTITUTE • SILICON VALLEY CHAPTER-NASPP



Decisions, Decisions: Choosing Choice and Offering Employee Choice Plans

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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



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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

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Key Statistics

Annual Revenue	\$38.3B
Total Employees	133K
Employees Receiving Equity	25K
Stock Delivered Globally In	49 countries
% U.S. Based	60%
% Global (Non-U.S.)	40%
Award Types:	
Stock Options	Yes
Restricted Stock/Units	Yes
Performance	Yes
Employee Stock Purchase Plan	Yes



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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

Annual Revenue	\$21.3B
Total Partners (green apron)	> 300K
Partners Receiving Equity	162K
Stock Delivered Globally In	22 markets
% U.S. Based	70%
% Global (Non-U.S.)	30%
Award Types:	
Stock Options	Yes
Restricted Stock/Units	Yes
Performance	Yes
ESPP (S.I.P.)	Yes



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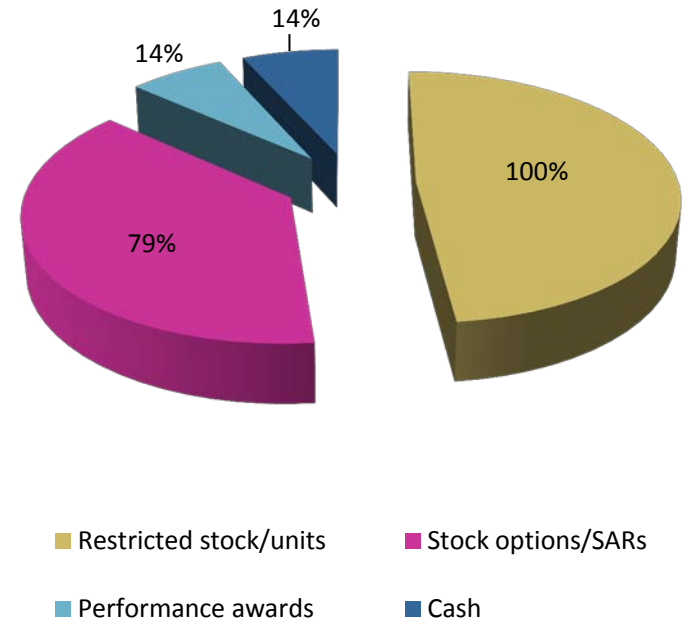
PREVALENCE OF CHOICE PROGRAMS



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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



Source: NASPP/Deloitte 2016 Stock Plan Design Survey.

Source: NASPP/Deloitte 2013 Stock Plan Design Survey.



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ORACLE AND STARBUCKS CHOICE PROGRAMS



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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



Oracle Choice Program

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

The screenshot shows the Starbucks Partner Hub interface. At the top left is the Starbucks logo and 'Partner Hub' text. On the right, it says 'Good morning, Megan Murphy' next to a profile picture. A navigation bar includes 'Company | Community | Career | Benefits | Resources' and a search box labeled 'Search Everything'. The main content area is titled 'Leadership Rewards' and includes a sub-header 'Learn about rewards for directors & above'. Below this is a large image of hands holding coffee beans. Text explains that partners in corporate-level director and above positions may be eligible for the Leadership Stock Plan, Leadership Bonus Plan, and Management Deferred Compensation Plan (MDCP). A call to action says 'Find plan information below, plus resources to help you manage your accounts and plan ahead.' Below this are three small images with labels: 'Leadership Stock' (coffee cherries), 'Leadership Bonus' (green hills), and 'Resources' (hands holding coffee beans). On the right side, there is a 'Talk to someone' section with contact info for Stock (stockadm@starbucks.com), Bonus (bonusadm@starbucks.com), and MDCP (savings@starbucks.com). Below that is a 'News & key dates' section with a link to 'Financial Wellness Overview (pdf)'. At the bottom right is a 'Fidelity' section with the Fidelity NetBenefits site link and phone numbers: U.S.: (866) 697-1048 and International: (800) 544-0275. A left sidebar lists various benefits like 'Pay & Time Off', 'Health & Life Insurance', 'Stock & Retirement Plans', and 'Leadership Rewards'.



Starbucks Leadership Reward Site

The screenshot shows the Starbucks Partner Hub interface. At the top left is the Starbucks logo and 'Partner Hub' text. On the right, it says 'Good morning, Megan Murphy' next to a profile picture. Below this is a navigation bar with links for 'Company', 'Community', 'Career', 'Benefits', and 'Resources', along with a search bar labeled 'Search Everything'. A left sidebar lists various benefit categories: 'Benefits Home', 'Pay & Time Off', 'Health & Life Insurance', 'Stock & Retirement Plans' (including 'Bean Stock', 'Stock Investment Plan (S.I.P.)', and 'Future Roast 401(k)'), 'Leadership Rewards', 'Fidelity', 'Financial Wellness', 'Starbucks College Achievement Plan', 'Perks & Other Benefits', and 'Tools'. The main content area is titled 'Leadership Stock' and features a large image of coffee beans. Below the image, text explains the Leadership Stock Plan (Starbucks Key Employee Stock Plan) as a long-term equity incentive plan for leaders, offering restricted stock units and stock options. It includes a call to action: 'Log into Fidelity NetBenefits to view stock grants, or select a box below for general information and useful resources.' To the right of the main text is a 'Talk to someone' section with five contact cards for: Billy Vitense (director, Stock), Megan Murphy (manager, Stock), Jill Gelling (manager, Stock), Hien Hasham (stock plan specialist), and Elise Restroat (senior operations analyst). At the bottom of the main content area are three small images with labels: 'General Information', 'Financial Planning', and 'Tax Resources'.



Starbucks Leadership Reward Site

The screenshot displays the Starbucks Partner Hub interface. At the top left is the Starbucks logo and the text "Partner Hub". To the right, it says "Good morning,". Below this is a navigation bar with links for "Company", "Community", "Career", "Benefits", and "Resources", along with a search box. The main content area is titled "Leadership Stock Financial Planning". Below the title, it states: "The following articles are licensed from mystockoptions.com to provide you with additional information to help plan and manage your stock-based compensation." A list of five articles follows:

- 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?

On the left side of the page, there is a sidebar menu with the following items: "Benefits Home", "Pay & Time Off", "Health & Life Insurance", "Stock & Retirement Plans", "Bean Stock", "Stock Investment Plan (S.I.P.)", "Future Roast 401(k)", "Leadership Rewards", "Fidelity", "Financial Wellness", "Starbucks College Achievement Plan", and "Starbucks College Achievement Plan".



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

	2014		2015		2016	
	# grants	%	# grants	%	# grants	%
100% Options	3,217	17%	3,168	15%	1,203	5%
100% RSUs	13,250	68%	15,683	73%	18,983	80%
50/50	3,000	15%	2,558	12%	3,584	15%
Total	19,467	100%	21,409	100%	23,370	100%



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



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Examples of Choice Plans

Coach

- Adopted in 2007
- Fairly broad based in nature: “corporate” employees and a portion of “field” employees
- Plan was historically options based; looking to diversify after market conditions changed
- Choice of 100% RSUs, a mix of options and RSUs, or 100% options
- Annual election with a default; previous elections do not carry over
- From 2007-2015, between 77%-88% of participants made an election
- Conducted an employee survey prior to launching Choice program to determine employee interest

3M

- Adopted in 2015
- Eligible participants are managers, directors, and above globally
- Viewed the Choice program as a way to stay competitive from a compensation perspective
- Choice of 100% RSUs, a mix of options and RSUs, or 100% options
- Annual election with a default – previous elections do not carry over
- In 2015, 82% of participants made an election



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

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