Post-Vest Holding Periods – A Developing Trend

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A developing trend we are observing in the area of executive compensation is what is commonly known as a post-vest holding period ("PVHP"). A PVHP is a requirement that an executive who receives a compensatory award of company stock must continue to retain a significant portion of that stock for some period of time after the award has vested, often until or even beyond retirement. PVHPs are particularly prevalent in the financial services industry, but they are beginning to emerge as a potential best practice in other industries.

We have identified a number of pros and cons that companies should consider before adopting or designing a PVHP policy. A high- level discussion of some of those considerations is set forth below.

PROS	CONS
Shareholder Alignment. By requiring executives to hold a significant number of shares to or beyond retirement, the interests of executives arguably are better aligned with shareholders and geared more toward building value over the long term.	**Incentive to Quit?** An executive who knows he or she cannot access shares until after retirement may, in some cases, choose to resign earlier to accelerate access to the shares.
Accounting. Adding a PVHP may reduce the compensation expense related to an equity grant because accountants often assign a greater illiquidity discount, thus reducing the overall accounting expense.	**Competitive Disadvantage?** Because not all companies impose PVHPs, those that do may be at a competitive disadvantage in terms of employee recruitment and retention. Many executives prefer to diversify their investments more than a PVHP may allow.
Shareholder Advocacy Groups. Institutional investors and proxy advisory firms view PVHPs positively and generally score more favorably those compensation programs that include a PVHP.	**Increase Other Compensation?** Because executives may value less favorably awards that are subject to a PVHP, some companies feel pressure to increase cash compensation or other benefits.
Reduced Award Scrutiny. When stock awards must be held to or through retirement, shareholders may become less sensitive to the timing of an award (i.e., awarding shares when the stock price is temporarily low) and even to the size of the award.	**Discourage Appropriate Risk Taking?** Often, shareholders do want their executives to pursue calculated risks. A PVHP may reduce an executive's incentive to take risks that might otherwise contribute to shareholder value.
Increased Emphasis on Succession Planning. If an executive has a large investment in the company after he or she retires, the executive presumably will be more focused on identifying and training his or her successor.	**Fairness?** Is it in fact fair to force executives to subject a substantial portion of their net worth to the performance of the company after they no longer have influence or control?

The considerations above are all very important to determine what type of PVHP policy, if any, is right for your company. There are also a number of other design issues to consider, such as the number of executives who are subject to the policy, the number or percentage of shares that are subject to the policy, and how best to implement and enforce the policy. If you would like to discuss any of these matters further, please contact any member of Winston & Strawn LLP's Employee Benefits and Executive Compensation Practice.

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