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Matthew Friestedt
Precious Nwankwo

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Matthew Friestedt and Precious Nwankwo*

CEO Mega Grant Practices

In August 2011, Tim Cook, Apple's chief operating officer at the time, was awarded a restricted stock grant worth nearly $384 million as part of his promotion to serve as the company's chief executive officer ("CEO"). While the use of stock-based compensation was not new, the size of Mr. Cook's award, and a number of "mega grants" that have followed, have garnered considerable attention in the press and among shareholders and proxy advisory firms. These mega grants, defined in this article as one-time equity grants in excess of $50 million, have become a tool to be used by companies to reward and incentivize their CEOs in certain limited circumstances. In the years since Mr. Cook's grant, proxy advisory firms have indicated that these awards have played a determining factor in recommending against a company's say-on-pay vote. In November 2015, Glass Lewis issued its proxy voting policies and methodologies for the following year in which it advised that it would revise its evaluation of these awards, including the decision to grant the award and terms of negotiation. Further, in December 2018 Institutional Shareholder Services ("ISS") issued guidance indicating that it is unlikely to support equity grants that cover more than four years (*i.e.*, the grant year plus three future years) because it believes that these awards limit the board's ability to adjust future pay in response to unforeseen events or changes in performance or strategic focus. ISS has also indicated that it will expect a firm commitment from the company not to grant additional awards over the covered period. The size of these awards are noteworthy due to the potential impact on shareholder value and public perception. This article highlights 21 mega grants that have been made since January 1, 2014 (plus Mr. Cook's grant in 2011).

At the time of Apple's mega grant to Mr. Cook, Apple was a $312 billion market capitalization company, and Mr. Cook's award, which vested over 10 years, represented approximately 0.12% of Apple's market capitalization. In the wake of Mr. Cook's grant, a few other technology companies made similar mega grants to compensate their newly promoted CEOs, including Microsoft in 2014 and Alphabet in 2016. However, these grants are not unique to technology companies and have spanned a broad spectrum of industries including entertainment, retail, telecommunications and financial services, with companies as diverse as Charter Communications, First Data, Lending Tree, Live Nation Entertainment and Walmart all having made similarly sizeable equity grants to their top executives.

Our research has identified three primary contexts in which mega grants are awarded: (1) in connection with an initial public offering ("IPO"), (2) upon the hiring or promotion of a new CEO or (3) for existing CEOs, in relation to the renewal of the CEO's employment agreement or refresher grant. The terms of mega grants vary tremendously in terms of type (stock options or restricted stock), service vesting conditions (if any) and whether the award is subject to performance conditions.

IPO MEGA GRANTS

In recent years, Dropbox, Go-Pro, JD.com, Snap, Switch and Xiaomi have used mega grants to compensate their founder-CEOs ahead of their IPOs. Boards may make these large grants in connection with an IPO to encourage the CEO's support of the transaction and to add incentives for the CEO's retention after the IPO. In this context, it is not unusual for the CEO to otherwise have large existing equity holdings in the company. This underlying motivation for the board may explain the considerably looser limitations attributable to these awards in the IPO context. For instance, mega grants in the IPO context tend to be more generous in terms of the size of the grant relative to the value of the company on grant date. Mega grants in the IPO context are often valued at 2–3% of the market capitalization of the company at the grant date compared to fractions of a percent for mega grants in other contexts. In addition, IPO mega grants often have fewer vesting conditions outside of the closing of the IPO; three companies, JD.com, Snap and Xiaomi, granted awards in the IPO context that were fully vested on grant or on the closing of the IPO, with no ties to the executive's future performance or service. Two additional companies, Go-Pro and Switch, provided for partial vesting on grant with additional awards to vest at a later date. In both cases, vesting of the remaining awards remained subject to the CEO's continued employment over three to four year periods from the date of grant. Only one company (Dropbox) provided for an award to its CEO and founder that had both long-term service vesting conditions and performance conditions.

NEW HIRE, PROMOTION AND RENEWAL/REFRESH MEGA GRANTS

In situations involving either a newly hired or promoted CEO or an existing CEO that is having their tenure extended by the company, the values of the grant, as a percentage of the company's market capitalization tend to be much lower than in the IPO context, with most awards falling under 1%. In addition, these grants often have more rigorous vesting conditions, with longer time horizons (three to five years and sometimes even 10 years), fewer units vesting per anniversary of the grant date, performance conditions and targeted stock price goals. In one of the more noteworthy refresher mega grants, Tesla granted an award of $2.6B in options to its founder and CEO Elon Musk (the design of this award was mimicked by Axon Enterprise for their founder and CEO Patrick Smith, who was granted $118M in options). While these mega grants are generous in size, they are designed to reward equally outsized achievements in performance, tying CEO compensation to company and shareholder value. The Tesla and Axon awards have a 100% pay-for-performance structure with vesting entirely contingent on achieving objective, pre-determined milestones. Additionally, both executives must retain the position of CEO or Executive Chairman and Chief Product Officer at their respective companies in order for any tranche of options to vest. These ambitious targets for these awards, which include meeting escalating revenue and adjusted EBITDA targets and an increased market size (12x current for Tesla and 9x current for Axon), provide a stark contrast to similarly sized grants awarded to CEOs in the IPO context which tend to have few, if any, conditions to full vesting.

ISS REACTION

Our survey took into account recommendations from ISS for both say-on-pay votes and compensation committee elections among each of the relevant companies. ISS recommendations for say-on-pay votes were available for ten of the 21 companies we surveyed, with ISS recommending an “against” vote in an overwhelming majority of cases (eight out of 10). In the case of Tesla's mega grant to Mr. Musk, despite the aggressive performance targets necessary to be met for vesting, ISS recommended against approval of the award, citing that the award limited the board's ability to adjust future pay levels according to changes in performance or strategic focus, reasoning it included in its proxy voting guidelines later that year. Further, they questioned the company's stated need to align Mr. Musk's financial interests with Tesla given his existing 22% stake in the company. In the only two instances where ISS recommended a “for” vote, Apple and Go-Pro, the awards were subject to time-based vesting ranging from five to 10 years, and subject to the CEO's continued employment (and the company's common stock maintaining a specified closing stock price in the case of Go-Pro).

With respect to compensation committee elections, ISS recommended an “against” or “withhold” vote of at least one member of the committee in nine out of the 13 instances for which we have data. In three of the nine cases, ISS's recommendations were split, advising that shareholders vote “against” for some committee members and “for” for others. In the case of First Data, while no compensation committee members were up for reelection in the year after the award grant, ISS recommended a “withhold” vote for all three directors who were up for reelection in that year. In the remaining four instances (Apple, Broadcom, Jet.com and Microsoft), ISS recommended a “for” vote for compensation committee members and a “for” vote on say-on-pay only in one instance (Apple).

MEGA GRANT CONSIDERATIONS

When making mega grants, compensation committees approving the award should consider the following items: market comparables, existing stock ownership, accounting consequences, summary compensation table disclosure and shareholder and market perceptions. Mega grants will be subject to even greater ISS scrutiny, so compensation committees should be mindful of ISS's new position in deciding whether to award mega grants and in determining how such awards should be structured.

Consideration should also be given to the treatment of the award in a sale or change in control ("CIC") context as well as the tax consequences of the company and executives under Sections 162(m) and 280G of the Internal Revenue Code. In the CIC context, companies should consider the appropriate treatment of mega grants including (i) whether vesting of such awards will be triggered upon the CIC or upon a qualifying termination after the CIC; (ii) if established performance metrics will be measured upon the CIC or otherwise deemed satisfied at a particular level (*e.g.*, target); and (iii) whether this treatment will apply to the entire award or only a pro-rata portion of the award based on the time worked. Further, companies should also consider treatment of the awards under Section 280G of the Code, which subjects executives to a 20% excise tax on certain "golden parachute" payments. Awards subject to performance-based vesting and awards with longer term (over five years) time vesting will be subject to much worse Section 280G treatment than standard three-year time vesting awards.

Lastly, with respect to Section 162(m) of the Code, compensation paid to certain individuals (including CEOs) is not deductible by the company to the extent such compensation exceeds $1,000,000 for the taxable year. As a result, large mega grant awards can be more costly on an after-tax basis. However, there is transition relief for companies who have recently undergone an IPO.

CEO Mega Grants

Company	Recipient/ Position	Grant Date	Context	Grant Date Value	Market Cap on Grant Date	Award as % of Market Cap	Award Type	Tenure [1] and Age on Grant Date	Additional Notes Performance/ Vesting Conditions	ISS Say-on-Pay Guidance	ISS Compensation Committee Election Guidance
Xiaomi	Lei Jun Founder/ CEO	April 2, 2018	IPO	$1.5B	$54B	2.8%	$1.5B Stock $15M Options	8 years 48 years old	Award granted to reward CEO for his contributions and is not tied to any future service or performance. On June 17, 2018, Mr. Jun was granted an additional $15M in stock options, which were immediately vested on grant and remain exercisable over a 20-year period.	N/A	N/A
Tesla	Elon Musk Founder/ CEO	March 21, 2018	Refresher grant	$2.6B	$53.5B	4.9%	Options	10 years 46 years old	Award consists of stock options with the vesting of each tranche subject to the achievement of both market capitalization and operational milestones. To fully vest, Tesla must meet a set of escalating revenue and adjusted EBITDA targets, achieve 12 of 16 outlined operational milestones and reach an ultimate market cap of $650B (12 times current). Mr. Musk must remain as Tesla's CEO or serve as both Executive Chairman and Chief Product Officer in order for any tranche to vest.	Against	**Chair**: N/A **Members**: Against
Axon Enterprise	Patrick Smith Founder/ CEO	February 26, 2018	LTI Compensation	$118M	$1.5B	7.9%	Options	25 years 47 years old	Award consists of stock options that vest in 12 tranches, with the vesting of each tranche subject to the achievement of both market capitalization and financial performance milestones.	Against	N/A [2]

									To fully vest, Axon must achieve a set of escalating revenue or adjusted EBITDA targets and reach an ultimate market cap of $13.5B (9 times current). Vesting is contingent on the CEO's continued employed as either Chief Executive Officer or Executive Chairman and Chief Product Officer.		
Live Nation	Michael Rapino CEO	December 15, 2017	Renewal of employment agreement	$58M	$9B	0.64%	$12M Restricted stock $46M Performance shares	12 years 51 years old	Restricted stock award vests ratably over four years and the performance shares will vest during a performance period running from November 1, 2017 through December 31, 2022 upon attainment of various stock price targets. The vesting of both awards is subject to the CEO's continued employment.	N/A	**Chair**: Against **Members**: Against
Dropbox	Andrew Houston Founder/ CEO	December 12, 2017	IPO	$110M	$9.2B	1.2%	Restricted stock	10 years 35 years old	Award vests over a performance period of up to 10 years following the closing of the IPO, based on the achievement of certain company stock price goals ranging from $30 to $90 (stock price on grant was estimated to be $11). Additional grant of (i) $47M in restricted stock to other co-founder, Arash Ferdowsi, subject to the same terms as the CEO grant and (ii) $34M in RSUs to SVP of engineering, product and design, Quentin Clark, which will vest over a five-year period subject to his continued employment.	N/A	N/A
Switch	Rob Roy Founder/ CEO	September 7, 2017	IPO	$88M	$4.2B	2.1%	Restricted stock award (3% of all outstanding shares)	14 years 49 years old	Forty percent of award vested on the closing of the IPO and the remaining 60% will vest over four years. Vesting is subject to the CEO's continued service unless he is terminated without cause, for good reason or due to death or disability.	N/A	**Chair**: Withhold **Members**: Withhold
LendingTree	Douglas Lebda CEO	July 26, 2017	Renewal of employment agreement	$57M	$3B	2%	Options	9 years 47 years old	Options subject to both time- and performance-based vesting conditions. Options subject to performance condition based on LendingTree's share price growth during a five-year period from grant date and subject to CEO's continued employment through the performance period.	N/A	**Chair**: Against **Members**: 1 For and 1 Against
First Data	Frank Bisignano CEO	July 20, 2017	Equity-based retention	$93M	$17.5B	0.53%	Restricted stock	4 years 58 years old	Award designed to vest over seven years, or 14% per year, based on performance. This percentage can be increased to 20% if First Data stock increases 15% for 10 consecutive trading days in a year (for vesting purposes, the 15% per share increase is cumulative).	N/A	Against [3]
Sarepta Therapeutics	Douglas Ingram CEO	June 26, 2017	New Hire	$57M	$1.9B	3%	$45M Options	N/A 55 years old	Option awards will vest in full only if within five years from the grant date, Sarepta's (1) stock price increases from	Against	N/A [4]

							$12M Restricted stock		$34 to $186 (a 438% increase) and (2) share price CAGR exceeds the CAGR of the NASDAQ Biotech Index's by at least 5%. The restricted stock awards vest gradually over a four-year period.		
Snap	Evan Spiegel Founder/ CEO	March 1, 2017	IPO	$637M	$24B	2.7%	RSU award (3% of outstanding shares)	5 years 26 years old	The RSUs vested on the closing of the IPO with no employment or performance condition. Additional $100M stock granted to chief strategy officer, subject to vesting over a period of 11 years from the grant date.	N/A	N/A
Walmart	Marc Lore CEO of Jet.com	September 19, 2016	Retention paid to Jet.com CEO after its acquisition by Walmart	$242M	$213B	0.11%	RSUs	2 years[5] 44 years old	RSUs to be paid over a five-year period, subject to the CEO's continued employment.	Against	**Chair**: For **Members**: For
Broadcom	Hock Tan CEO	June 15, 2016	LTI Compensation	$98M	$103B	0.095%	PSUs	10 years 62 years old	PSUs to vest based on relative TSR and absolute TSR over two overlapping performance periods, with one three-year performance period ending in 2020 and one four-year performance period ending in 2021.	Against	**Chair:** For **Members**: For
Charter Communications	Thomas Rutledge CEO	April 25, 2016	Renewal of employment agreement	$88M	$42.5B	0.21%	$10M Restricted stock $78M Options	4 years 62 years old	Awards do not become 100% eligible to be vested until five years from the date of grant and must vest through the achievement of certain stock price thresholds (with per-share hurdles ranging from $289 to $564 from a grant date value of $222) based on the closing price of the company's Class A common stock on the NASDAQ Global Select for 60 consecutive trading days, *provided* that none of the awards may vest in the first three years from the date of grant. All awards that have not vested after six years are cancelled. Unvested awards are also cancelled in the event of a termination by the company for cause or a voluntary termination without good reason.	Against	**Chair**: For **Members**: 3 For and 1 Against
Valeant Pharmaceuticals	Joseph Papa Chairman/ CEO	April 25, 2016	New Hire	$52M	$12B	0.43%	$10M Options $12M RSUs $30M PSUs	N/A 60 years old	Options will vest ratably on each of the first four anniversaries of the CEO's commencement date, subject to his continued employment with the company through the applicable vesting date. RSUs will vest on the fourth anniversary of the CEO's commencement date, subject to his continued employment through the vesting date, *provided* that the vesting of 50% of the RSUs may be	N/A	N/A

									accelerated to the second anniversary of his commencement date if certain individual goals are met. PSUs will vest on the fourth anniversary of the CEO's commencement date based on the achievement of certain company share prices, applying linear interpolation for performance between the applicable thresholds, and subject to the CEO's continued employment with the company through the vesting date.[6]		
Google/ Alphabet	Sundar Pichai CEO	February 3, 2016	CEO Promotion	$199M	$561B	0.04%	Restricted stock	12 years 43 years old	Awards vest in quarterly increments over four years, subject to the CEO's continued employment.	Against	**Chair:** Withhold **Members**: Withhold
Expedia	Dara Khosrowshahi CEO	March 31, 2015	Renewal of employment agreement	$84M	$12B	0.7%	Options	9 years 46 years old	1.6 million of the options vest 50% on each of the third and five year anniversaries of the grant date, subject to continued employment. 1.1 million of the options vest upon satisfaction of a stock price goal of $170 (an increase from the grant date stock price of $91), subject to continued employment.	N/A	**Chair**: Withhold **Members**: Withhold
Go-Pro	Nick Woodman Founder/ CEO	June 2, 2014	IPO	$285M	$3B	9.5%	RSUs	12 years 39 years old	Award to vest in three tranches of 1.5M RSUs, with the first tranche vesting on the grant date. Subsequent tranches to vest monthly over 36 months from the grant date, with vesting conditional upon the CEO's continued employment and the company's common stock maintaining a specified closing stock price.	For	**Chair**: Withhold **Members**: 1 For and 1 Against
JD.com	Richard Qiangdong Liu Founder/ CEO	March, 6 2014	IPO	$591M	$25B	2.4%	RSUs	10 years 41 years old	The RSUs vested on the closing of the IPO and were granted in consideration of the CEO's past and future services.	N/A	N/A
Microsoft	Satya Nadella CEO	February 3, 2014	CEO Promotion	$65M	$272B	0.02%	RSUs	22 years 46 years old	Awards will be earned based on the company's TSR relative to the S&P 500 over each of three overlapping, five-year performance periods beginning on the grant date and the first and second anniversaries thereof.	Against	**Chair**: For **Members**: For
Discovery	David Zaslav CEO	January 2, 2014	Renewal of employment agreement	$145M	$63B	0.23%	$51M SARs $94M PRSUs	7 years 54 years old	Award included a large upfront initial award of cash- and stock-settled SARs, a smaller one-time sign-on PRSU grant with a one-year performance period and a large upfront PRSU grant with a multi-year performance period.	N/A	**Chair:** N/A **Members**: Withhold
Apple	Tim Cook CEO	August 24, 2011	CEO Promotion	$384M	$312B	0.12%	RSUs	13 years 50 years old	RSUs to vest five years (50%) and 10 years (50%) after grant date, subject to the CEO's continued employment.	For	**Chair**: For **Members**: For

Footnotes

* *MATTHEW FRIESTEDT is a partner and PRECIOUS NWANKWO is an associate in the Executive Compensation and Benefits group of Sullivan & Cromwell LLP. Contact: friestedtm@sullcrom.com or nwankwop@sullcrom.com.*

1 Based on tenure as CEO, except in the context of CEO promotions in which case tenure is based on time at company.

2 No compensation committee members were up for reelection.

3 While no compensation committee members were up for reelection in 2018, ISS recommended a "withhold" vote for all three directors who were up for reelection in that year.

4 No compensation committee members were up for election in 2018.

5 Length of tenure as Jet.com CEO.

6 In March 2018, Valeant cancelled the CEO's PSU award in reaction to negative stockholder feedback. The CEO received a 2018 LTI award with an aggregate value of $10M under its new LTI program, implemented to better align awards with Valeant's business strategy.

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