

# Creating Value with Equity Compensation

---

## Approaches for the Entrepreneurial Business

John Markson  
June 24, 2009



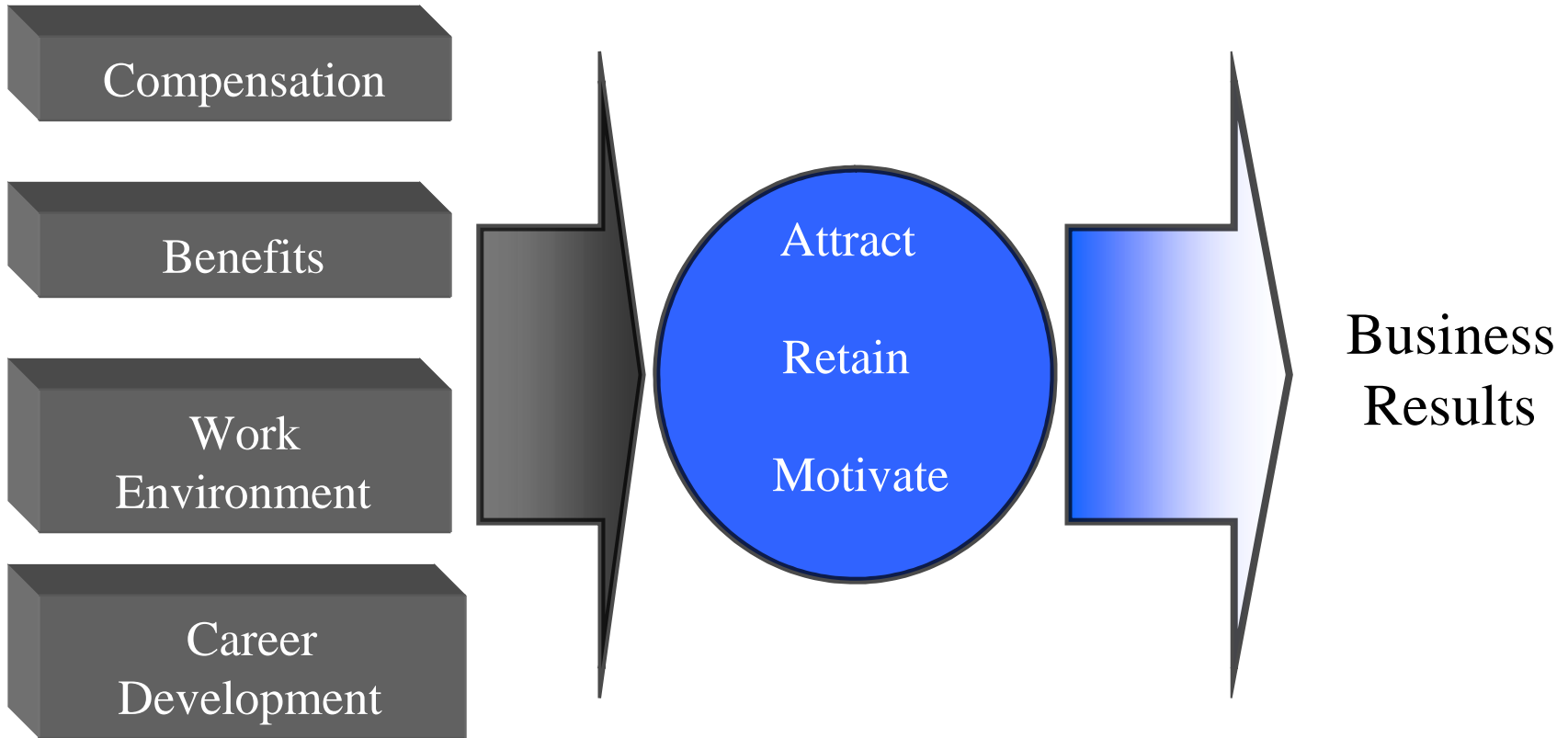
---

1658 Homestead Avenue  
Atlanta, GA 30306

Phone: 404.474.1246  
Fax: 404.474.1161

# Context

---



# Equity Compensation

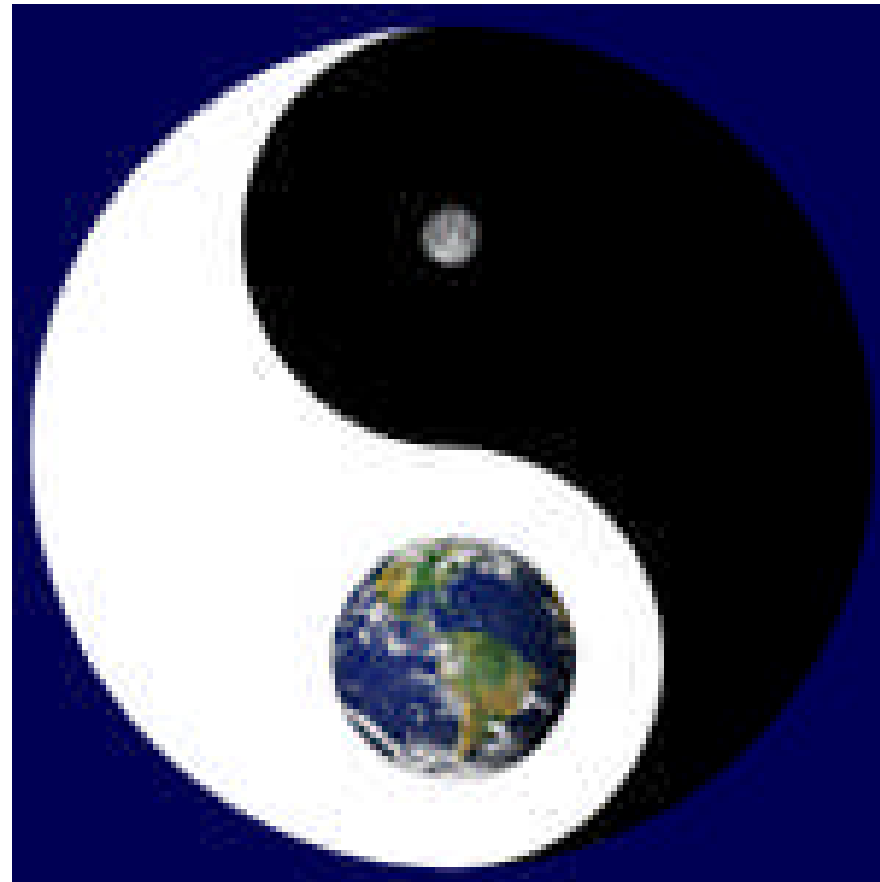
---



- Stock Options
  - Stock Appreciation Rights
  - "Incentive" or non-Qualified
- Restricted Stock
  - Performance Vesting
  - Time Vesting
- Cash or Stock Settled

# Compensation Is not a Zero-Sum Game

---



# Equity Compensation

---

- An equity compensation plan can improve the value of your company by:
  - Encouraging ownership behaviors among your employees
  - Improving long-term retention
  - Attracting the right types of potential employees
  - Creating 'golden handcuffs' for a potential buyer



While Conserving Cash

# It is not a Substitute

---

- An equity compensation plan cannot substitute for poor people management
  - Clear individual goals and accountability
  - Performance management
  - Vision
  - Hiring practices
  - A competitive compensation & benefits program

# Some Issues to Consider

---

- State of Employee Talent
- Is there a Transaction on the Horizon
- Competitive level of Pay
- Real versus Notional
- Tax & Legal

# Competitive Compensation

---

Annual Compensation of CEOs of Public Companies with  
≈\$20 million in annual revenue;

Industry	In \$000's			Total
	Base	Bonus	Long-Term Incentives (e.g., Equity)	
Information Technology	285	90	265	640
Manufacturing (Chemicals & Plastics)	295	75	160	530

Source: ERI

# “Burn” Rates

---

Percentage of Equity Distributed Annually

Non-Russell 3000

---

Software & Services	5.46%
Hotels, Restaurants,	2.35%
Energy	1.71%

---

Source: Risk Metrics

# “Overhang” by Industry

---

Percentage of Equity Granted or Approved to  
Be Granted

Technology	Business & Financial Services	Consumer Services	All
20%	16%	14%	17%

Source: Presidio Pay Advisors

# “Overhang” by Size

---

## Percentage of Equity Granted or Approved to Be Granted

Under \$25 million	\$25 – 150 million	Greater than \$150 million	All
19%	18%	13%	17%

Source: Presidio Pay Advisors

# Notional Equity or Cash Settlement

---

	<b>Real</b>	<b>Notional</b>
Share Value	Same as for other owners	As specified
Voting or other ownership rights	Yes	No
Disclosure	Yes	Yes
Right to annual dividends/earnings	Yes	Only as specified
Taxable Event upon Vesting	Yes	No; upon payment
Accounting	Fixed; Over Vesting	Mark-to-Market

# Legal & Tax Considerations

---

- Taxability
  - IRC Section 409A
    - Taxability of non-qualified deferred compensation
  - IRC Section 83
    - Taxability of property transferred in connection with services
  - IRC Section 451
    - Constructive Receipt
- ERISA
  - Funding and vesting requirements for a deferred compensation plan that is deemed a pension plan for non-senior management
- Securities Laws
  - Confirm Exemption from Registration

# It is Not Complex to Implement

---



1. Validate business case
2. Decide on approach
3. Validate Security Exemption, & tax & accounting treatment
4. Draft document
5. Draft employee communication
6. Assign administration (can be internal)

# Take-Aways

---

- Compensation is not a zero-sum game
- Sharing in ownership is a powerful approach to employee retention and creating an ownership culture while conserving cash
- Voting ownership does not have to be granted
- A simple program can be set up quickly and inexpensively.