

Designing TSR Awards: A “How To”

Presentation for:

Executive Compensation Webinar Series
March 10, 2016

Presented by:

Anthony J. Eppert
713.220.4276
AnthonyEppert@AndrewsKurth.com

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Tony Eppert

Partner

Andrews Kurth LLP

Tel: +1.713.220.4276

Email: anthonyeppert@andrewskurth.com

- Tony practices in the areas of executive compensation and employee benefits

- Before entering private practice, Tony:
 - Served as a judicial clerk to the Hon. Richard F. Suhrheinrich of the United States Court of Appeals for the Sixth Circuit
 - Obtained his LL.M. (Taxation) from New York University
 - Obtained his J.D. (Tax Concentration) from Michigan State University College of Law
 - Editor-in-Chief, Journal of Medicine and Law
 - President, Tax and Estate Planning Society

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- Upcoming 2017 webinars:
 - To be announced in September
 - To suggest a topic for 2017, please e-mail Anthony Eppert

Purpose of this Presentation

- The purpose of this presentation is to discuss total shareholder return (“**TSR**”) calculations
- TSR calculations are complex and, without sufficient background information, are apples to oranges when comparing a TSR program of one company to the TSR programs of its peer group
- Additionally, TSR calculations contain a number of design variables that can significantly change the overall design, including whether the TSR awards perform or “pay out.” For example, there are
 - Absolute TSR designs,
 - Relative TSR design, and
 - Each of the foregoing can have many different design structures
- For purposes of the following slides, and unless otherwise specifically indicated, use of the term “TSR” means “relative TSR”

Absolute TSR Formula

- TSR is simply stock price appreciation/depreciation, plus reinvestment of dividends, over a measurement period
 - Another way to look at it, is that TSR measures the return an investor would receive if he or she bought one share of common stock at the beginning of the measurement period, accumulated dividends during the measurement period, and then sold the common stock at the end of the measurement period
- An absolute TSR formula is calculated as follows:

$$\text{TSR} = \frac{\text{Ending Price} - \text{Beginning Price} + \text{Dividends}}{\text{Beginning Price}}$$

- The payout is then determined as a function of the company's TSR compared to predetermined goals (*i.e.*, it is not compared to the TSR of the peer group)
 - For example, if the company's TSR equals or exceeds x%, then the percentage of the target award earned equals x%

Relative TSR Formula

- A relative TSR program has the same math formula as an absolute TSR program; however, with a relative TSR program the payout is determined as a function of the company's TSR ranking/ratio compared to the TSR ranking/ratio of its peer group
 - For example, if the company's TSR percentile rank/ratio equals or exceeds x%, then the percentage of the target award earned equals x%
- The following represents a hypothetical (though typical) relative TSR program:

	Relative TSR Rank	Payout %
Maximum:	75 th percentile	200%
Target:	50 th percentile	100%
Threshold:	25 th percentile	50%
Below:	Less than 25 th percentile	0%

- In the above example, if the company's TSR rank relative to its peer group is at the 25th percentile, then the payout would be 50% of the target shares

Relative TSR Formula (cont.)

- The following steps are typically employed when computing relative TSR
 - Calculate TSR for the company and each member of its peer group,
 - Determine the sequential rank/ratio for each company in the peer group according to its TSR performance, and
 - Determine the corresponding portion of the award that should vest or payout

Reasons “For” and “Against” a TSR Program

- The following represent some of the reasons “For” adopting a TSR program:
 - Awards earned by the executives are commensurate with shareholder returns (*i.e.*, strong shareholder alignment),
 - TSR programs are viewed positively by shareholders and proxy advisory firms because payouts are commensurate with shareholder return, and
 - Avoids having to annually set multi-year financial goals

Reasons “For” or “Against” a TSR Program (cont.)

- The following represent some of the reasons “Against” adopting a TSR program
 - TSR is a reward program, not an incentive program, because stock price of the company and of the peer group companies is not within the control of the CEO or other executive (*i.e.*, a TSR program provides “no line of sight” to drive executive officer behavior, and to be an incentive, there needs to be line of sight);
 - TSR is not a long-term value generator because it simply measures a change in stock price between two dates (in contrast, for example, growth in revenue and earnings are long-term value generators);
 - The company has high volatility in its stock price and/or the company’s peer group has high stock price volatility (the latter applying when relative TSR is used);
 - Due to the Monte Carlo simulation modeling, relative TSR programs will typically result in higher values being disclosed in the proxy statement (*i.e.*, sometimes the values are higher than the grant date price); and
 - For share reserve calculations under shareholder-approved equity incentive plans, a TSR program “reserves” the maximum number of shares

Relative TSR Design – Peer Group

- Picking an appropriate peer group is the first major step to designing a relative TSR program. Should the company use:
 - A market stock index such as the S&P 500?
 - A specified peer group of companies?
 - Or a combination of the above two?

- The typical considerations in selecting peer group members apply, including:
 - Industry,
 - Revenue,
 - Market cap,
 - Earnings, and
 - Possibly geography

- In terms of the number of peer group members (assuming use of a specified peer group), a goal should be to use enough companies in order to prevent:
 - Significant changes from one rank or percentile to the next; and
 - Distortions due to bankruptcies, M&A events, liquidations, going private, etc.

Relative TSR Design – Peer Group (cont.)

- Generally, it is desirable to pick peer group companies that have strong correlation in stock price
- Addressing volatility, care should be taken to avoid matching a company with low volatility to a peer group containing high volatility (and vice versa)
- How should the relative TSR program address changes to members of the peer group of companies that occur during the measurement period due to bankruptcy, M&A activity or going private transactions?
 - Should it be fixed (*i.e.*, the number of peer group companies could then decrease over the measurement period due to, for example, an M&A event), or
 - Prior to the measurement period should there be a determination as to how replacement peer group companies will be chosen (*e.g.*, use a stand-in dummy entity with TSR that is deemed equal to the average TSR of all remaining peers), or
 - Should the choosing of a replacement peer group member be left to the discretion of the compensation committee of the board of directors

Relative TSR Design – Calculating Number of Shares

- Typically, a compensation committee will have an initial dollar value to award to each executive, and such dollar value must then be converted into shares for purposes of creating a relative TSR award
 - Example: To continue to incentivize and retain executive, the compensation committee is granting the executive a target TSR award equal to \$100,000 as of the date of grant
 - The next step is to convert the \$100,000 to a number of shares subject to the award

- The design issue is whether the \$100,000 in the above example should be converted to shares on the basis of:
 - Grant date stock price, or
 - Grant date “fair value” (determined using a Monte Carlo valuation)

- The answer will likely depend on the driver, *i.e.*, whether the Compensation Committee is more concerned with:
 - The perceived value of the award to the executives, or
 - What value will be reported in the Summary Compensation Table

Relative TSR Design – Calculating Number of Shares (cont.)

- Grant date fair value will usually exceed the grant date stock price by a substantial percentage
 - This means a lesser number of shares could be subject to the award if the grant date fair value is used, and
 - A higher dollar could be disclosed in the Summary Compensation Table than was initially intended by the Compensation Committee if grant date fair value is used
- For example, assume the target grant value is \$100,000 and the closing stock price on the date of grant is \$20.00 per share
 - Use of the grant date stock price would produce the following: $\$100,000/\$20.00 = 5,000$ shares = **\$100,000 of initial perceived value**
 - Use of the grant date fair value (assuming the estimated fair value is \$25.00/share in this example) would produce the following: $\$100,000/\$25.00 = 4,000$ shares = **\$80,000 of initial perceived value**

Relative TSR Design – Calculating Number of Shares (cont.)

- And to help smooth the effect of stock price volatility that can arise due to the point-to-point measurement in the relative TSR calculation, an average stock price could be used (e.g., average stock price over a 30-day period)
 - Which can help to alleviate concern that relative TSR payouts are influenced by market timing

Relative TSR Design – Determining Measurement Periods

- The measurement period is a point-to-point analysis with a beginning, a middle and an end
 - The starting point is important because companies with poor stock performance at the starting point have an advantage over peer group companies beginning the measurement period with strong performance
 - The middle does not matter and has no impact on the relative TSR calculation
 - The ending point is also important because the market generally places a higher priority on the future expectations of a company (as opposed to its current performance)

- In our experience, most companies use a 3-year measurement period, measured on a cumulative basis
 - And some companies will require a time-vesting component that begins at the end of the performance period

- Should there be any additional kicks at the can?
 - For example, if at the end of the 3-year measurement period the program does not produce an award, then the program could remain in place for one additional year (*i.e.*, one additional kick at the can)
 - And using this example, the measurement period during this additional year could be on a monthly or quarterly basis, or a one-time annual basis (*i.e.*, the design is flexible)

Relative TSR Design – Reinvested Dividends

- Though dividends are not required to be included in a relative TSR formula, inclusion of dividends paid during the measurement period is common (*i.e.*, shareholders received such gains)

- Which date should be used for calculating the amount of a dividend?
 - The date the dividend was announced;
 - The “ex-dividend date”? This date is generally two days prior to the record date, and is the date that determines whether a shareholder will receive the dividend (*i.e.*, shareholders who bought the stock prior to the ex-dividend date will receive the dividend, and shareholders who bought the stock on or after the ex-dividend date will not receive the dividend);
 - The record date (*i.e.*, the date the list of shareholders of record is completed); or
 - The date the dividends are paid to shareholders of record

Relative TSR Design – Rank or Outperformance Design

- Description of a “rank design”
 - Most relative TSR programs are rank designs
 - This means that the relative TSR results for each peer group company are ranked in ascending order, then a percentile rank calculation is performed to determine where the company ranks in its peer group

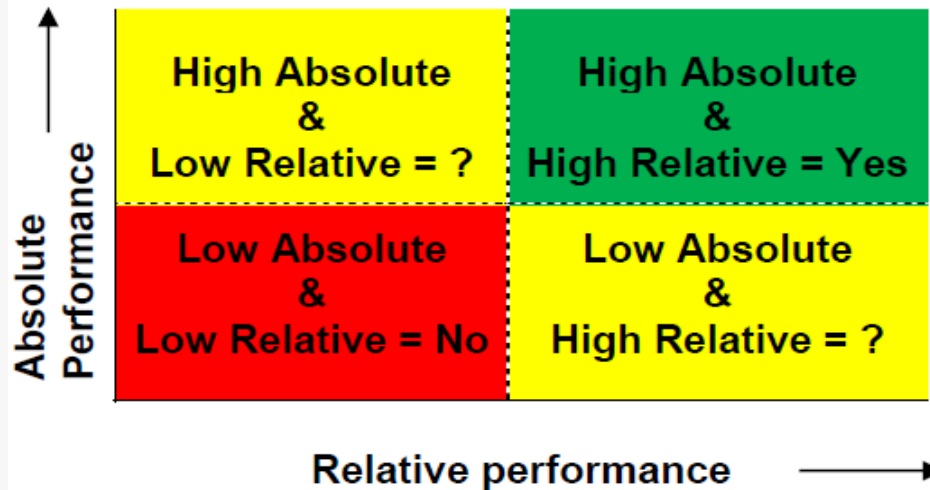
- Description of an “outperformance design”
 - Payouts are determined by “how much” the company’s TSR outperformed the TSR calculation of its peer group members

Relative TSR Design – Determining Payouts

- This is straight forward, there is typically a:
 - Threshold target to get “any” award,
 - Target award, and
 - Maximum award
- In setting payouts, consider the compensation philosophy of the company
 - For example, if the company pays at the 40th percentile under its compensation philosophy, then target could be set at a 40% performance, which would result in a 100% payout

TSR Design – Determining Payouts – Negative Returns

- What happens when there is no alignment between absolute TSR and relative TSR? For example:
 - Should management be rewarded when absolute TSR is high, but relative TSR is low (*i.e.*, a reward to reflect the gains realized by shareholders)?
 - Should management be rewarded when absolute TSR is low, but relative TSR is high (*i.e.*, a reward to reflect outperformance of the peer group)?



- Possible ways to address negative returns are on the next slide

TSR Design – Determining Payouts – Negative Returns (cont.)

- Possible ways to address negative returns:
- 1st – Eliminate any payouts when absolute TSR is negative over the performance period
 - Consider too whether this should work in the reverse, to provide a payout when absolute TSR is high but relative TSR is low (*i.e.*, a reward to reflect the gains realized by shareholders)
- 2nd – cap the payout opportunity when absolute TSR is negative over the performance period
 - Such caps typically limit the payout to the target level
 - If applicable, the cap would apply irrespective of whether the relative TSR formula would have otherwise required a higher payout opportunity
 - Consider whether the cap should work in the reverse, to protect management in instances where absolute TSR is high but relative TSR is low (*i.e.*, a reward to reflect the gains realized by shareholders)
- 3rd – have a formula modifier that downward adjusts the payout when the company has a negative return (*i.e.*, similar in formula to an upward adjustment that would apply if the company had positive TSR)

TSR Design – Determining Payouts – Negative Returns (cont.)

- A common reason “for” addressing negative returns
 - Why should management be entitled to a payout for outperforming peers when shareholders lost money?

- A common reason “against” addressing negative returns
 - Management should be paid for outperforming peers because shareholder loss could have been greater at a peer company
 - The existence of a possible elimination of payout, a cap or a formula modifier would decrease the “fair value” of the award, thus possibly increasing the number of shares subject to the award
 - A double-edged sword, because result could be used as a “for”

TSR Design – Determining Payouts – Examples

- The following is an example of a company that adjusts the relative TSR payout (*i.e.*, cutback or enhancement) based on absolute TSR:

Absolute TSR	Muliplier
Less than 0%	50%
0% to 15%	100%
Greater than 15%	150%

- The following is an example of a company that uses absolute TSR to only enhance the relative TSR payout:

Absolute TSR	Additional Payout
0% or Less	0%
4%	20%
16%	110%
25% or Greater	200%

TSR Design – Change in Control Provisions

- There are a number of TSR design issues to address a change in control transaction, including:
 - Ignore the actual performance through the change in control date, and pay awards at the target level;
 - Pay at the target level, but then pro rate the award to the date the change in control was consummated;
 - Maintain the status quo calculation, but shorten the measurement period until the change in control date; and
 - Same as the above, but pro rate the award to the date the change in control was consummated

TSR Design – Accounting

- The following slides address the accounting consequences of TSR awards under ASC Topic 718
- The following slides are informational only, and are solely intended to highlight how the accounting consequences could impact design and peer company selection
- The following slides do not constitute accounting advice

TSR Design – Accounting – Monte Carlo Simulations

- Fair value of the TSR award must be determined in accordance with ASC Topic 718
 - Because relative TSR is considered a market condition, the effect of the market condition is reflected in its grant date fair value
 - The most common technique to determine grant date fair value is the utilization of Monte Carlo simulations

- A risk-free rate of return is used to increase the beginning stock prices for each of the companies over the service period, resulting in the mean estimated stock price at the end of the term for each of the companies
 - A volatility factor is then utilized to estimate the standard deviation from the mean ending stock price
 - Then the dollar value of expected dividends to be paid over the term is added to the ending stock price to determine the stock's return

- The Monte Carlo simulation can be run upwards of 30,000x

TSR Design – Accounting – Monte Carlo Simulations (cont.)

- Specifically, under a Monte Carlo simulation, fair value is a determination of the following estimated parameters:
 - The estimated risk-free interest rate, which is generally estimated from the period of time from the grant date until the performance end date;
 - The estimated volatilities (for all companies), which is generally a blend of the historical and implied volatilities;
 - The estimated correlation matrix (which measures the degree to which one security moves in sync with another) from the return rate (for all companies), which is generally estimated for the period from the grant date until the performance end date; and
 - The expected dividends to be distributed during the performance period (for all companies), which is also estimated using the pattern of dividend distributions before the grant date

TSR Design – Accounting – Monte Carlo Simulations (cont.)

- Pointers – volatility
 - Generally, a low volatility rate decreases the likelihood that the TSR for the company will be at the high end of the peer group range, and therefore, would likely result in a lower fair value per share (in contrast, a higher volatility should result in a higher fair value per share)

- Pointers – dividend yield
 - Once the Monte Carlo simulation projects the ending stock prices, the applicable dividends to be paid must be calculated
 - Dividends paid impact the TSR percentile
 - Generally, an increase in the assumed dividend yield relative to the peers will result in a greater TSR (and thus a greater award value)

- Pointers – correlation coefficient
 - Generally, a low correlation coefficient between the company and the peer group means that company's TSR is not strongly tied to the peer group
 - This means there would be an increased likelihood that the TSR for the company will exceed or be lower than the peer group
 - Thus, a low correlation coefficient could increase/decrease the award value)

TSR Design – Accounting – Reducing Expense

- Recently, some companies have been reducing the accounting expense associated with TSR programs by capping the amount of gain that can be recognized in the award
 - For example, the value of the payout would be capped at a multiple of the target award value (e.g., 5x the target award value)

- Such a provision is unlikely to have practical consequences unless the company experiences extremely high growth
 - However, practically applied or not, it still should work to reduce the accounting expense associated with the TSR program

- Other designs that can help reduce accounting expenses include:
 - Limit the payout or reduce it to \$0.00 when absolute TSR is negative
 - Reduce any gap between the beginning of the measurement period and the actual grant date (e.g., performance period begins January 1st, but grants are not effectuated until after the annual meeting in April)
 - All known information must be included in the fair value determination
 - This means that if performance begins before the grant date, then such performance during the gap period must be included in the fair value determination
 - For example, if the company outperforms its peers during the gap period, then grant date fair value will higher because the Monte Carlo simulation will deem the company to outperform the peers after the grant date
 - And if the company underperforms during the gap period, then the grant date fair value will be lower . . .

Don't Forget Next Month's Webinar

- Title:
 - Practical Tactics to Negotiating Executive Employment Contracts

- When:
 - 10:00 am to 11:00 am Central
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Andrews Kurth Locations

AUSTIN

111 Congress Avenue
Suite 1700
Austin, Texas 78701
Phone: +1.512.320.9200
Fax: +1.512.320.9292

BEIJING

Room 2007, Capital Mansion
No. 6 Xin Yuan Nan Lu,
Chao Yang District
Beijing, China 100004
Phone: +86.10.8486.2699
Fax: +86.10.8486.8565

DALLAS

1717 Main Street
Suite 3700
Dallas, Texas 75201
Phone: +1.214.659.4400
Fax: +1.214.659.4401

DUBAI

Andrews Kurth (Middle East) DMCC
45th Floor
Mazaya Business Avenue, BB2
Jumeirah Lakes Towers
P.O. Box 118273
Dubai, UAE
Phone: +971.4.567.0767
Fax: +971.4.567.0768

HOUSTON

600 Travis Street
Suite 4200
Houston, Texas 77002
Phone: +1.713.220.4200
Fax: +1.713.220.4285

LONDON

Andrews Kurth (UK) LLP
16 Old Bailey
London EC4M 7EG
United Kingdom
Phone: +44.20.3053.8300
Fax: +44.20.3053.8299

NEW YORK

450 Lexington Avenue
New York, New York 10017
Phone: +1.212.850.2800
Fax: +1.212.850.2929

RESEARCH TRIANGLE PARK

4505 Emperor Boulevard
Suite 330
Durham, North Carolina 27703
Phone: +1.919.864.7200

THE WOODLANDS

Waterway Plaza Two
10001 Woodloch Forest Drive
Suite 200
The Woodlands, Texas 77380
Phone: +1.713.220.4800
Fax: +1.713.220.4815

WASHINGTON, DC

1350 I Street, NW
Suite 1100
Washington, DC 20005
Phone: +1.202.662.2700
Fax: +1.202.662.2739

