# "Equity Award Approvals: From Governance to Disclosure"

## Wednesday, December 3, 2025

## Course Materials

## "Equity Award Approvals: From Governance to Disclosure"

**Wednesday, December 3, 2025**

2 to 3 p.m. Eastern [archive and transcript to follow]

Public companies grant equity awards to their executives, employees and directors at least annually, but the process is anything but simple. In this deep dive on award approvals, our panelists will address common foot faults and share best practices to help you dot your i's and cross your t's when awarding equity in 2026.

- **Sheri Adler,** Troutman Pepper Locke
- **Jeff Joyce,** Pay Governance
- **David Kaplan,** Partner, Troutman Pepper Locke

Among other topics, this program will cover:

1. Not Your Kindergartener's Math: Share Counting
2. Planning Ahead: Award Design
3. Approval Formalities:
    a. Who Approves?
    b. What Gets Approved?
    c. Grant Timing, Sizing and Disclosure
4. Documenting and Communicating Awards

# <u>"Equity Award Approvals: From Governance to Disclosure"</u>

## Course Outline

1. Not Your Kindergartener's Math: Share Counting

2. Planning Ahead: Award Design

3. Approval Formalities:

    a. Who Approves?

b. What Gets Approved?

c. Grant Timing, Sizing and Disclosure

4. Documenting and Communicating Awards

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# Equity Award Approvals: From Governance to Disclosure

CompensationStandards.com

December 3, 2025

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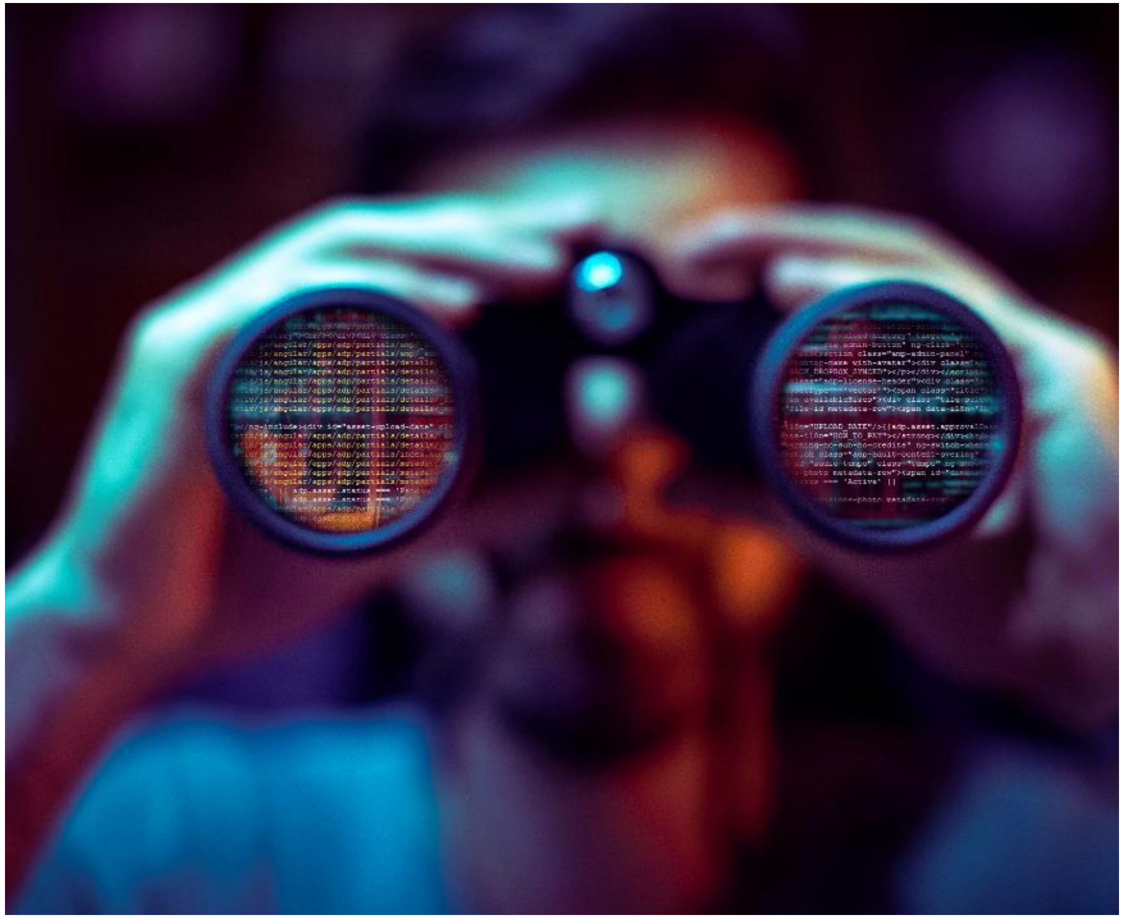
# Agenda

# Not Your Kindergartener’s Math – **# of Shares Available**

# Equity Plan – Read the fine print

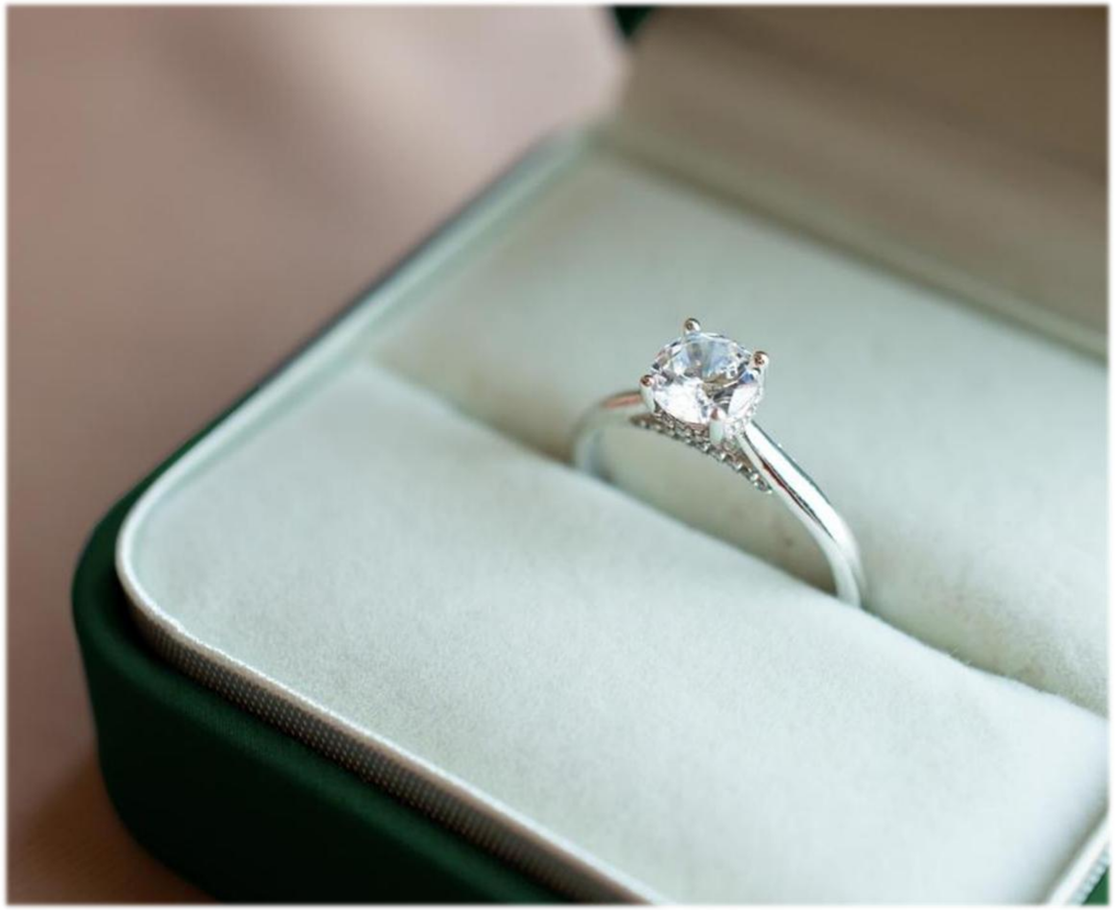
- Base share pool
- Forfeitures under plan
- Forfeitures under prior plan
- Other share recycling rules
- PRSUs – what performance level are you tracking at
- 1:1 ratio or fungible share pool

# Equity Plan – ***Know your limits***



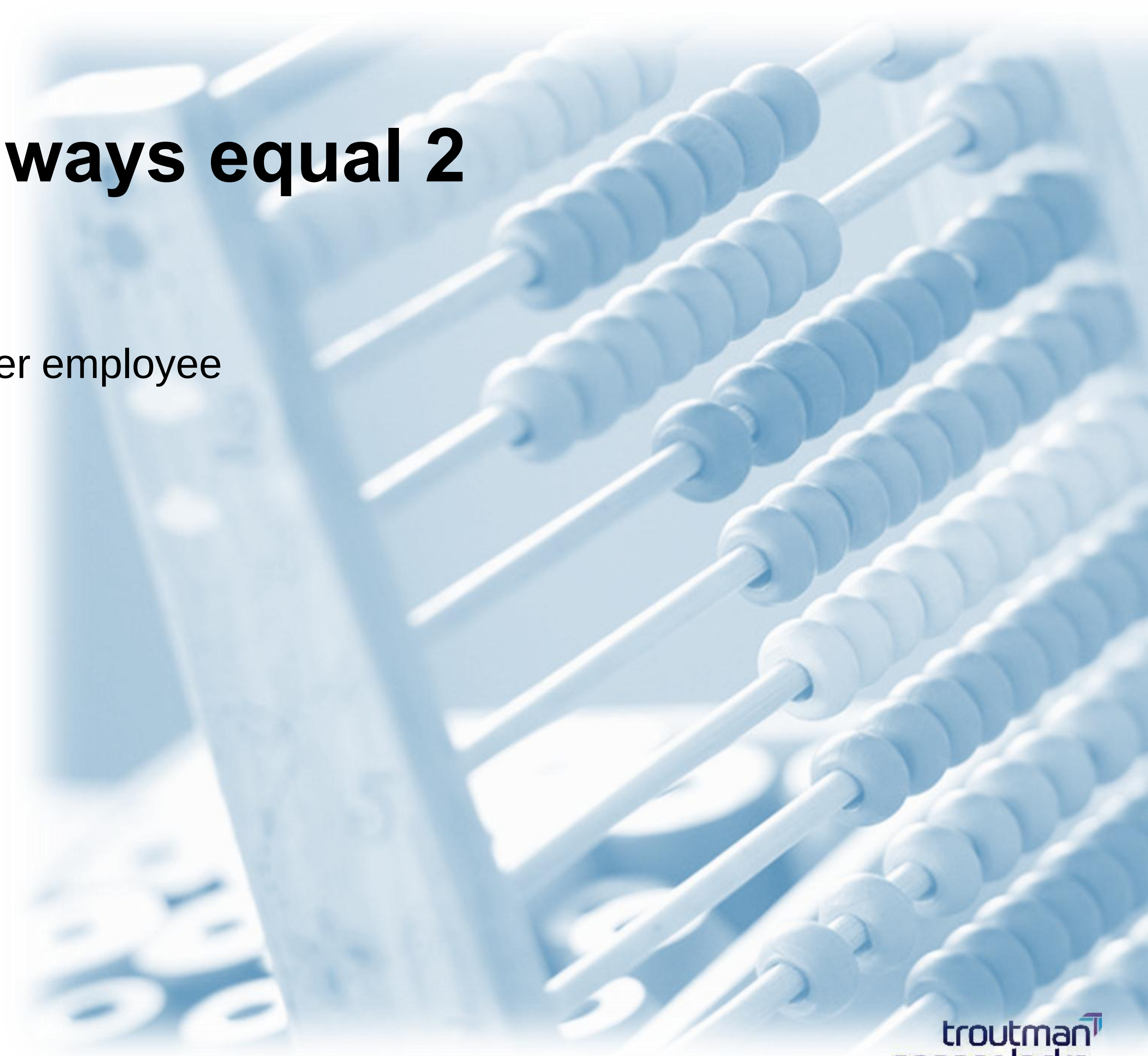
- Non-employee director limits
- Minimum vesting rule with carveout for up to 5% of shares
- Legacy 162(m) limits
- Limit on award type (*i.e.*, full value vs. appreciation awards)

# More shares – When to pop the question?



- What's your relationship (with your shareholders) like?
- Is your shareholder controlling?
- Do you care what ISS thinks of you?
- What's the cost (to prepare an equity plan proposal)?
- What's the price (of the shares)?
- How big of a cushion (cut) are you looking for?

# S-8 – **1 + 1 doesn’t always equal 2**



- Registration for securities offered under employee benefit plans
- Transaction basis
- Consult your securities lawyer!
- Different calculations
  - *e.g.*, Impact of recycled shares

# Advance Prep – “The *DEETs*”

| Which types of awards? | Any design changes? | What's the vesting schedule? | Who is involved? |
| --- | --- | --- | --- |
| • Options/SARs, RSUs, PRSUs | • PRSU metrics<br>• Accelerated vesting on qualifying termination events | • Don't forget minimum vesting rules | • Legal, Compensation Consultant, Valuation Advisor, and Management |

# **Who** needs to approve?

# It **Depends**

## Check your charters

- Typically, Compensation Committee is plan administrator and approves grants, at least to executive officers
- Sometimes full Board must approve a CEO grant
- Often full Board approves director grants
  - May be pre-approved under self-effectuating director compensation policy
  - Sometimes a different committee (*i.e.*, Nominating Committee) "owns" director compensation

## Delegation

- Administrative ease
  - Flexibility to grant and negotiate awards without seeking Compensation Committee input for employees that would typically be outside of committee's purview
  - Particularly helpful for off-cycle awards or new hire/retention awards
- Check company's documentation
  - Does equity plan permit delegation?
    - Amendment

# Delegation

## Clearly define who the delegate may grant to

Delaware General Corporation Law 152(b) and 157(c) permit delegation

- Can be one or more people – does not need to be officers
- Resolutions setting up delegation must check the box for certain formalities required by the rules (share cap, time limit, etc.)

## Clearly define who the delegate may NOT grant to

Not executive officers or directors

## Equity award committee of the board another option

“Committee” of CEO director

Check company’s governing documents – minimum committee size

## Document well

Keep contemporaneous written records of grant approvals

Beware of backdating options

Internal process for documenting grants and reporting out to the Compensation Committee or Board

# **What** is Being Approved?

# All the material terms of the award, including:

- **Size of Award**
- **Grant Date**
- **Exercise Price (Stock Options/ SARs)**
- **Vesting Terms/ Performance Conditions**
- **Effect of Termination and CIC**

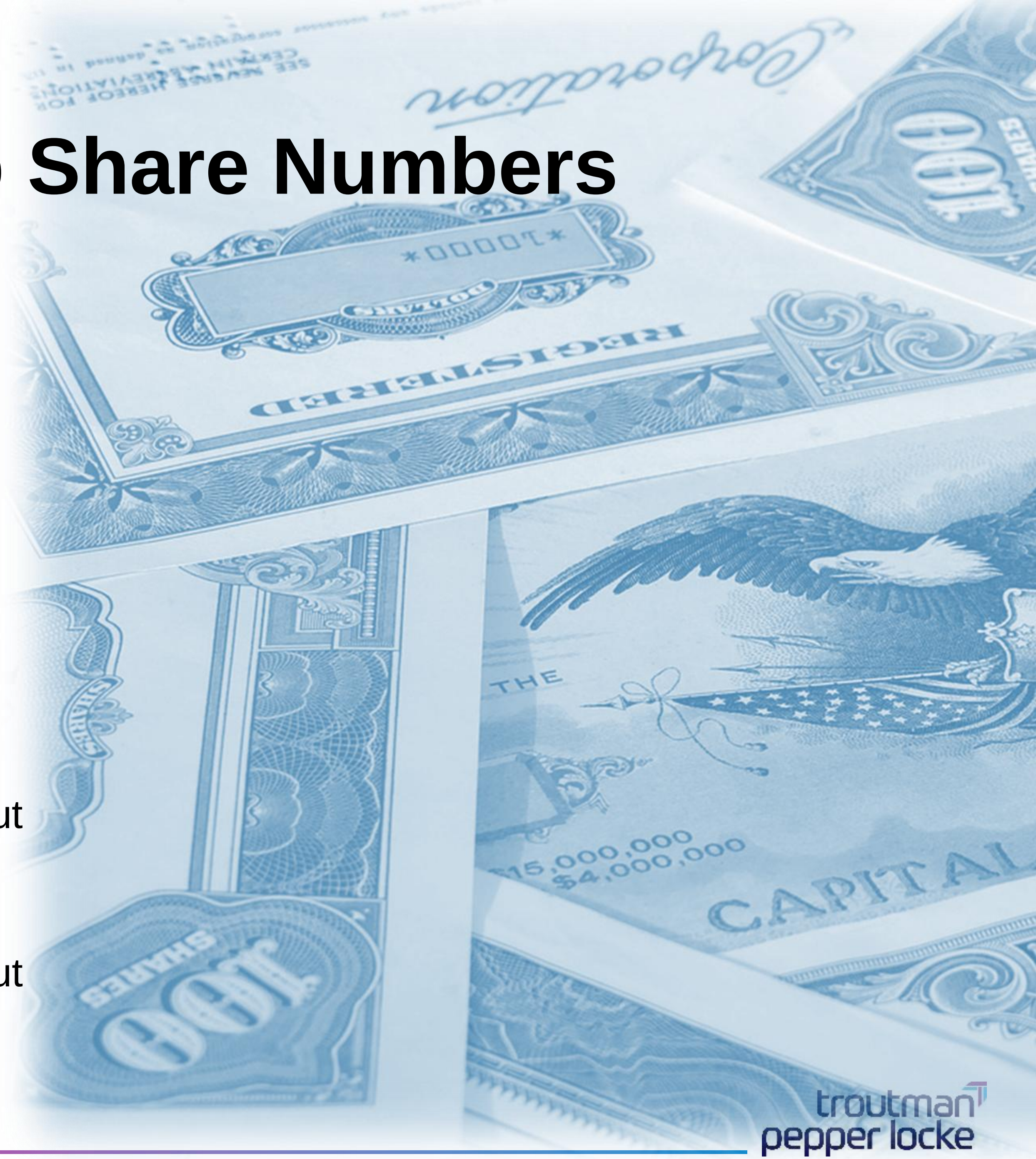
# Size of Award


**(Sometimes) specified number of shares**

**(Usually) a dollar value representing intended total grant date value of award**

- How will dollar value be allocated among award types (e.g., 50% PRSUs, 25% RSUs and 25% Stock Options)
- Approval must specify method of conversion, which may be different for each award type (more on this later)

# Converting Award Values to **Share Numbers**




### RSUs

- Closing price on approval date
- Closing price on grant date
  - for RSUs, this is equal to accounting value
- Simple multi-day average
  - How many days?
  - Ending when?
    - Item 402(x) and analogous MNPI considerations
- Volume weighted average

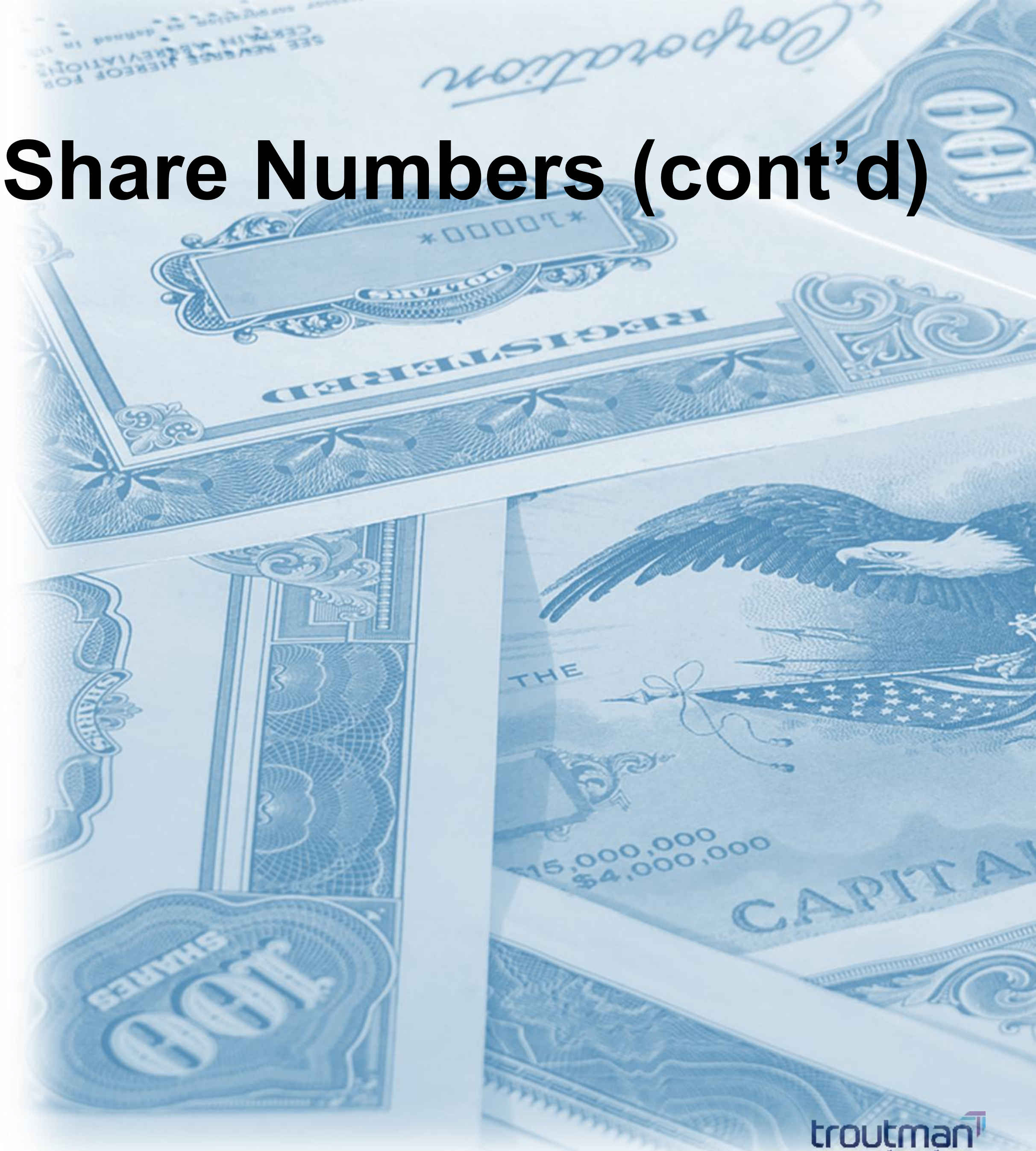
### Stock Options/SARs

- Accounting value, where stock price is only one input

### PRSUs

- Spot or average prices, as described above
- Accounting value, where stock price is only one input

# Converting Award Values to **Share Numbers (cont'd)**



## Consequences of using any approach not aligned with accounting value

- Value shown in proxy tables will not correspond to value reflected in approval
  - Summary Compensation Table
  - Grants of Plan-Based Awards Table
- Difference may be material
- P4P Analysis

## What if approved values and accounting values diverge?

- Fiduciary considerations
- Benchmarking considerations
- IR considerations
- Disclosure considerations
  - *IBT, Garage Employees Local 272 Labor Management Pension Fund vs. Apple Inc.*

# Potential **Pitfalls**

**If management is left to infer methodology to convert stated value to share numbers:**

- Section 16b-3 exemption will be in doubt for some issuances, as exemption requires approval by independent directors of Board or Compensation Committee
- Potential invalidity of grant under…
  - state law
  - equity plan terms
  - exchange listing requirements
- Poor governance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# Bonus Practice Pointer: **Prior Auth**

**If company withholds shares to cover taxes for Section 16 officers**

- Make sure Compensation Committee has authorized share withholding
  - Hardwired into equity plan or form of award approved by committee
  - Standing resolution

# Section 16 Reporting **Considerations**

## Form 4 filings triggered by equity award approval

- Filings immediately due for:
  - RSUs/Restricted Stock
  - Stock Options/SARs
- To ensure timely filings, manage communication between Compensation Committee and disclosure team

# Practice Pointer: **Form 4 Consolidation**

**Reduce your number of Form 4 filings by coordinating new awards with Form 4 events for previously granted awards**

- Certification of earned PRSUs
  - Can be addressed at same Compensation Committee meeting as new awards
- Share withholding for settlement of vested RSUs and PRSUs
  - Although vesting and settlement can be simultaneous, they don't have to be
    - Check award documentation for permitted settlement timing
      - Typically, issuers will have 15 - 60 days to issue shares (sometimes longer)
    - Tax law
      - 409A, 409A, 409A

- Often, the settlement of multiple years' awards (and multiple award types) can be aligned, so that Form 4 reporting of share withholding can be consolidated
  - Thinly traded issuers using sell-to-cover withholding may not prefer this approach, as it can put pressure on the stock price (or require more sales than the market can absorb in a single day)

# Documenting Awards

# Communicating Awards

## Grant occurs under ASC 718 when:

- Grantee and grantor reach a mutual understanding of the key terms and conditions of the award (presumed to exist upon approval by the authorized body under the company's corporate governance requirements IF):
  - Award is unilateral and therefore grantee can't negotiate key terms and conditions
  - Key terms and conditions are **communicated to grantee within a relatively short time period** from the approval date
    - the period in which a company could reasonably complete all actions necessary to communicate the award to the grantee in accordance with its customary practices
- Grantor is contingently obligated to issue shares once vesting conditions are fulfilled
  - If shareholder approval is needed, not considered granted until shareholder approval is obtained (unless approval is just a formality or perfunctory)
- Grantee begins to benefit from, or be adversely affected by, changes in the share price

# **Grant** Agreements

## Dating

- Especially important for options authorized by a delegate

## Modes of acceptance of grant

- Affirmative acceptance
  - Restrictive covenants
  - Mandatory arbitration provision
- Deemed acceptance
- Deemed forfeiture

# Sum It All Up

# Sample Calendar For 2027 Q1 Grants

**Jan 2026 (or earlier)**

**Share counting**

**Fall 2026**

**Advance prep**

**February 2027**

**Feb 19, 2027**
Compensation Committee approval

**Feb 24, 2027**
10-K filing date

**Feb 26, 2027**
Option (+ RSU + PRSU) grant effective date

**March 2027**

**Documenting awards**

# Meeting Materials – Example

**WHEREAS,** pursuant to the Equity Incentive Plan, it has been proposed that the Company issue certain time-based restricted stock unit awards (the "2027 RSUs") and performance-based restricted stock unit awards ("2027 PRSUs") to the Company's executive officers in the amounts and on the terms authorized on Exhibit A1 attached hereto; and

**WHEREAS,** the Committee believes it is in the best interest of the Company and its shareholders to approve the grant of the 2027 RSUs and the 2027 PRSUs, each in accordance with Exhibit A1.

**NOW THEREFORE, BE IT HEREBY RESOLVED,** that, effective at the close of trading on the second full day after the filing of the Company's Form 10-K for fiscal 2026, the Committee hereby grants the 2027 RSUs and the 2027 PRSUs to the grantees, in the amounts and on the terms specified on Exhibit A1; and be it

**FURTHER RESOLVED,** that such 2027 RSUs and 2027 PRSUs will be evidenced pursuant to the applicable form of award agreement previously approved by the Committee, subject to such modifications as are necessary to reflect the terms approved in these resolutions.

# Meeting Materials – Example (cont’d)

## EXHIBIT A1

### 2027 Awards

| Title | RSUs ($) (1) (2) | PRSUs ($) (1) (3) |
|---|---|---|
| CEO | | |
| COO | | |
| CFO | | |
| CHRO | | |
| CIO | | |
| GC | | |
| CAO | | |

1. Number of RSUs and PRSUs (at target) issued will be determined in each case by dividing the dollar amount shown by the closing price of the Company’s common stock on the trading day which is the second full day after the Company files its Form 10-K for fiscal year 2026, rounded down to the nearest share.

2. RSUs will vest over a three-year period, with 1/3 vesting on each of the first, second and third anniversary of grant. These RSUs will otherwise be subject to the terms of the Company’s previously approved RSU award agreement, including terms regarding the treatment of certain termination events (such as the grantee’s death, disability or retirement).

3. PRSUs will vest, to the extent earned, if the grantee is employed by the Company from the grant date through the last day of the Performance Period. These PRSUs will be subject to the terms of the Company’s previously approved PRSU award agreement, including terms regarding the treatment of certain termination events (such as the grantee’s death, disability or retirement).

All awards shall be made pursuant to the Equity Incentive Plan.

Thank You!