10 Considerations
For Next Phase of Growth

1. ***Long-Term Control/Multi-Class.*** Many high-growth companies are putting multi-class structures in place to retain closer long-term control of the company's business decisions and vision as the stock becomes more dispersed. Cooley has worked with dozens of such companies to implement thoughtful voting and other structures.

2. ***701 Compliance***. In light of the higher valuation of the company's common stock, equity grants quickly surpass the 701(d) and 701(e) thresholds. All grants should be reviewed and analyzed to determine compliance with the rules, and many companies are forced to provide 701(e) "enhanced disclosure" to all optionees that exercise after a certain date. This disclosure includes financial statements that may be highly sensitive, and the Cooley team has significant experience setting these up in a thoughtful way.

3. ***Secondary Sales***. The pressure for liquidity grows over time and many high-growth companies are seeking ways to provide for some employee liquidity program. Cooley has worked with a number of high-growth companies to structure programs that are beneficial to employees but deal with conflicting 409A and tax issues.

4. ***Transfer Restrictions.*** Secondary purchasers are increasingly targeting former and current employees to obtain stock in high-growth companies, and Cooley has a great deal of experience in setting up protective transfer restrictions (in Bylaws and option plans) that provide greater Board control over transfers and protect against potential acquisitions by unwanted purchasers, while complying with Delaware's alienation statutes.

5. ***409A and Cheap Stock***. With higher valuations, the pressure on common stock fair market values increase, and the company needs to be thoughtful about the nature and timing of its third-party valuations. These valuations and the grants subject to them can be highly scrutinized by the SEC and others at the time of an IPO and result in unwanted compensation charges or even financial restatements.

6. ***Exempt vs Non-Exempt***. SaaS software companies with large inside salesforces, particularly in California, often need to be particularly careful about how employees are categorized for exempt and non-exempt status. Cooley has a great deal of experience navigating the archaic rules and safe harbors to avoid potentially large fine and claims for non-compliance.

7. ***Acquisitions***. M&A is often a critical strategic focus for many high-growth companies and needs to be structured in a way that meets the growth demands of the organization, and understands the potential impact on the company's financial statements and future disclosure requirements.

8. ***Equity Compensation***. The competition for high-quality talent, particularly with software companies and particularly in the Bay Area, increases the need for equity compensation structures that meet the needs of employees, and Cooley has a great deal of experience in structuring programs that provide hiring and retention leverage to its clients.

9. ***OFAC and Export Controls***. SaaS software companies have to be particularly careful about potential OFAC and expert controls issues that may arise from an otherwise accelerated and open business model. Rapid user, customer and geographic growth can often result in compliance issues. Cooley has a deep bench of experts in helping high-growth software companies manage these risks.

10. ***FCPA***. The use of channel and other partners by many software companies increases the risk of potential non-compliance with certain anti-bribery and kick-back laws. Cooley has a stable of talented experts in this field that can help the company navigate these risks and best protect itself for the future.

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