



Member's Corner

The right fit

by Steve Grossman, CPMR

Former IHRA President & Chairman

I have been writing lately about the struggle of finding the new "right fit" for my partner and myself. Like all good reps I decided to contact an account that has been in the past financially troubled, but now seems to be "stable." I contacted two buyers, one by phone and the other by email.

To no surprise, I got no response by leaving a voice mail message, and the one reply by email left me at a lower level than no response: "Thanks for your email. I am very happy with my present sources and if one of them falters, and I have your information on file, I will contact you."

I am not sure if the door was left open or not.

I am disheartened that in a time that many of the retailers are crying for new ways to attract customers, their so-called buyers/category managers don't really have time to scout/scope the market. I am not promising I could have the next hula-hoop, but it seems that unless I am already doing business with the account, I might never have the chance to make a presentation.

If I am to place blame, it ultimately falls on the shoulders of management. One of my MM friends, who I do not sell a thing to, has the policy that they must basically answer all new inquires in 48 hours of their receipt. This does not mean grant an appointment, but it gives the seller/buyer a chance to see if there is an opportunity now, in 6 months or never.

This policy has many benefits. The buyer does not have to listen to 10 voice mails/emails from a persistent salesperson, the next hula-hoop may be found, the salesperson must be organized to take advan-

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Legally Speaking

Compensating key employees with stock options and deferred compensation plans (part 2)

by Gerald M. Newman, IHRA Legal Counsel;

co-authored by Leonard Gambino,

partners at Schoenberg, Fisher, Newman & Rosenberg

In a recent article [April 2003], we discussed compensating key employees with stock in your company. However, it is not always appropriate or desirable to have additional stockholders, and so in this article we will discuss some of the alternatives to issuing stock.

Issuing stock options

A stock option gives an employee the right to acquire company stock at an agreed-upon price (the "strike price") for a certain period of time. The receipt of a stock option of a closely held company by an employee as compensation for services is not taxable to the employee. A stock option in a closely held company can be useful because it allows the employee to acquire the stock, and pay any associated tax liability, at the option of the employee at such times as the plan allows. For example, the stock option plan could provide that an employee can exercise the stock only upon the employee's retirement, or only if the company is sold.

In the case of a non-qualified option, the employee will recognize ordinary income upon the exercise of the option in an

amount equal to the excess of the fair market value of the stock over the strike price. This same amount is also fully deductible by the company as an ordinary business expense in the year in which the employee exercises the option. The company is free to grant non-qualified options for any period of time and at any strike price.

Because the exercise of a non-qualified stock option is a taxable event for the employee, non-qualified options work well where the employee will exercise the option in connection with the sale of the company. The employee can exercise the option, acquire the stock, and then receive a pro rata share of the net proceeds from the sale of the company. If, on the other hand, a nonqualified stock option plan allows the employee to exercise the option upon his/her retirement, the plan should also provide that the company will redeem the stock acquired by the employee at the same time. The plan should also provide a method for valuing the employee's stock, as well as for paying this amount to the employee over time. By doing this, the employee gets a stream of

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RESPONSE REQUESTED
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tage of the time given, or he/she will be viewed as not having/adding value, the buyer is able to give direction to the salesperson so when there is a next time the exchange is more productive; plus you could probably add a few to the list.

The frustration I deal with, and sometimes it gets the better of me, is in the major accounts I do make my living with, I am viewed as helpful and a professional. The ones who don't know my record or me usually treat me as yesterday's news. I really cannot blame all of them, since management does not necessarily put

emphasis on seeing and developing new contacts. If anything, the trend to consolidate keeps growing.

I must admit it is nice to be on the inside of the consolidated effort, but in the long run it doesn't help the industry. It, at times, raises the bar too high to replace an existing vendor. The retailer looses since he/she is stuck with the current source and viable sources cannot afford the buy in and/or take back. If competition makes retailers better, why can't the management see that competition and a somewhat open field for suppliers make their product presenta-

tion and store a better place to shop?

Therefore the right fit for us seems to be two fold. I am 90% sure I will make it to Hong Kong the end of July which will increase my base of manufacturers to sell to my retailers. Also we are trying to move away from commodity goods, so price is not so much an issue.

Hope you had a good 4th of July and enjoy being an independent professional rep.

Good Selling and your comments are welcome at steman4@aol.com.

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income over time, and the company does not have a former employee as a minority stockholder.

In the case of a qualified option, the employee will recognize income only upon the sale of the stock that was acquired by the exercise of the option. Unless the employee was in an alternative minimum tax situation, the income in this case would be equal to the excess of the net proceeds from the sale of the stock over the strike price, and provided that the employee held the option for more than one year before exercising it, this income would constitute long-term capital gain. Unlike non-qualified options, however, qualified options must meet the requirements of the tax code. For example, a qualified option may not have a term of more than 10 years and may not be issued with a strike price that is less than the fair market value of the stock (or in some cases, 110 percent of the fair market value of the stock) at the time the option is issued. In addition, the company is never entitled to a deduction in connection with the grant or exercise of qualified options.

Unlike the employee who is issued actual stock in the company, an employee who owns stock options will not have any of the rights of a

stockholder in the company unless and until s/he exercises the option and acquires the stock. Under each state's corporate law, a stockholder in a closely held corporation has certain statutory rights and is owed certain fiduciary duties by the officers, directors and other stockholders of the company, which can complicate both corporate governance and the ability of the majority owners to engage in certain types of transactions to the detriment of the minority stockholders. All of these issues can be appropriately avoided by the use of either qualified or non-qualified stock options.

Using a stock appreciation rights plan

A stock appreciation rights plan is simply a form of deferred compensation that bases the amount of the deferred compensation on the appreciation in the value of the company's stock. Such plans are designed to give employees some of the economic benefits associated with stock ownership without creating any adverse tax consequences associated with the receipt of actual stock as compensation for services. A stock appreciation rights plan benefits the company because it does not create any of the governance or

fiduciary issues that arise if the employees receive actual stock. In addition, amounts paid to the employee under the plan are fully deductible by the company as an ordinary business expense in the year(s) in which they are made.

With a stock appreciation rights plan, the employee does not acquire actual stock in the company, nor even the right to acquire stock in the company. Instead, the employee is granted stock appreciation rights having a value that is tied to the value of the company's common stock. In a typical stock appreciation rights plan, the employee will be granted stock appreciation rights having an initial value equal to the fair market value of the company's common stock as of the date such rights are granted. These rights will then be valued again upon the happening of certain future events (for example, the sale of the company or the retirement of the employee), and the employee will be entitled to receive deferred compensation equal to the appreciation in value of the rights that s/he was granted.

Basing deferred compensation on stock appreciation is just one of the ways that deferred compensation can be measured. Deferred com-

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pensation plans can also provide employees with deferred compensation based on other measures of financial performance, either for the company as a whole or for the particular employee.

The employee as creditor

Stock appreciation rights plans and other non-qualified deferred compensation plans are "unfunded" plans, and the employee is like any other unsecured creditor of the company. Despite being "unfunded," companies can and often do set aside funds each year for the purpose of meeting its deferred compensation obligations in the future. These funds can be commingled with other company funds, held in a separate bank account, or held in a so-called "rabbi trust." While plans which set aside funds in a separate account or rabbi trust offer the employee some assurance of payment, these plans are nevertheless "unfunded" because the funds set aside are still subject to the claims of the company's creditors. Thus, the employee has no assurance of payment in the event of the company's bankruptcy or insolvency. A plan which puts the plan assets beyond the reach of the company's creditors may be subject to ERISA (Employee Retirement Income Security Act). This adds costs, complexities, and limitations that may be unacceptable to both the company and the employee.

Gerald Newman and partners are part of IHRA's Expert Access Member Benefit. They can be contacted at: (312) 648-2300 and eMail: gerry.newman@sfn-law.com

IHRA continues to grow

Since the beginning of 2003, IHRA has added twenty-six (26) new member firms. **A BIG Welcome to:**

Company

Access Sales and Merchandising
Calgary, AB. T3A 5K4 Canada

Alliance Marketing
Bedford, TX. 76095

ARO Sales, Inc.
Valrico, FL. 33594

Ask Sales
San Jose, CA. 95120

The Connection
Charlotte, NC. 28229

Creativity Plus / div of Pamed
Bonita Springs, FL. 34135

Cruz & Molina Enterprises Corp.
Saint Just, PR. 00978-0457

Direct Source LLC
Lake in the Hills, IL. 60156

Ebbert Sales & Marketing
Pittsburgh, PA. 15127

Elite Sales
San Ramon, CA. 94583

Kitchen Concepts
Anaheim, CA. 92801

Karen Love, A Sales Partnership
Benicia, CA. 94515

M & R Marketing & Associates
Gibsonia, PA. 15044

McCabe Trading Company, LLC
North Wales, PA. 19454

McDonald and Associates
Omaha, NE. 68135

Mundo Sales & Marketing LLC
Fairport, NY. 14450

Murtfeldt Associates
La Canada, CA. 91001

PBM Inc.
Plainfield, IL. 60544

Pinnacle Sales
Comstock Park, MI. 49321

Robert A. Cooley
Rochester, NY. 14623

Sea to Sea
Cambridge, ON. N1R 2H7 Canada

Elias Shaker & Company
Arlington Heights, IL. 60005

Silverhart Group
Tustin, CA. 92782

Summit Sales
Raleigh, NC. 27609

Super Saver Sales, Inc.
Marietta, GA. 30067

Total Marketing Associates, Inc.
Rolling Meadows, IL. 60008

Contact

Guy Armstrong

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Aylene Kuhn

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Mel Liebowitz

Paul McCabe

Mike McDonald

Robert Urrutia

Kathy MurtFeldt

Joe Martin

Duane Koerner

Robert Cooley

Genie Berger

Bruce Funk

Barbara Silver

Dick Keeler

Michael Levine

Fred Cimaglio

2003 INDUSTRY CALENDAR OF EVENTS

July

Atlanta International Gift & Home Furnishings Market
July 11, 2003 - July 15, 2003
Atlanta, GA

Fall Gift & Home Furnishings Market
July 15, 2003 - July 22, 2003
Los Angeles, CA

California Gift Show
July 19, 2003 - July 22, 2003
Los Angeles, CA

July Chicago Gift & Home Market
July 24, 2003 - July 31, 2003
Chicago, IL

Washington Gift Show
July 27, 2003 - July 30, 2003
Chantilly, VA

August

Orlando Gift Show
August 02, 2003 - August 05, 2003
Orlando, FL

New York International Gift Fair
August 09, 2003 - August 14, 2003
New York, NY

CGTA Gift Show
August 10, 2003 - August 14, 2003
Canada

41 Madison Gift Show
August 10, 2003 - August 14, 2003
New York, NY

Seattle Gift Show
August 16, 2003 - August 20, 2003
Seattle, WA

Tendence Lifestyle
August 22, 2003 - August 26, 2003
Frankfurt, Germany

San Francisco International Gift Fair
August 23, 2003 - August 27, 2003
San Francisco, CA

SIAL Mercosur
August 26, 2003 - August 29, 2003
Buenos Aires, Argentina

September

Natural Products Expo East
September 04, 2003 - September 07, 2003
Washington, DC

September (cont.)

Philadelphia Candy Show
September 07, 2003 - September 09, 2003
Philadelphia, PA

Fall Chicago Gift & Home Market
September 12, 2003 - September 14, 2003
Chicago, IL

NASCORE Coffee & Tea Trade Show
September 12, 2003 - September 14, 2003
Portland, OR

Atlanta Gourmet Show & Fall Gift & Accessories Market
September 13, 2003 - September 15, 2003
Atlanta, GA

New York Home & Textiles Show
September 19, 2003 - September 22, 2003
New York, NY

Dallas International Gift & Home Show
September 20, 2003 - September 22, 2003
Dallas, TX

Fall Gift & Home Furnishings Market
September 28, 2003 - September 30, 2003
Los Angeles, CA

October

Anuga
October 11, 2003 - October 15, 2003
Koln Messe - Cologne, Germany

Atlanta Gourmet Show and Gift & Accessories Market
October 13, 2003 - October 16, 2003
Atlanta, GA

Coffee Fest Seattle
October 24, 2003 - October 26, 2003
Seattle, WA

New York Fall Tabletop Market at 41 Madison
October 25, 2003 - October 30, 2003
New York, NY

November

International Hotel/Motel & Restaurant Show
November 08, 2003 - November 11, 2003
New York, NY

**MARK YOUR CALENDARS FOR:
2nd Annual IHRA Membership
Breakfast & Program
Sunday, March 21, 2004
7:00 - 9:00 AM**

A VERY IMPORTANT SURVEY • RESPONSE REQUESTED

It was recently brought to our attention that the product categories IHRA defines as "Housewares" might be too narrow. Many of our members actively sell - or **would like to sell** - products that cover the entire spectrum of "Home, Housewares and Hardware Products."

Manufacturers of products in the broader, often specific product spectrum, but not in our currently defined categories, contact us looking for representatives. Most

times we must tell them we can't help.

To get a better picture and profile of your company and to serve you better, we would appreciate your assistance in better defining your company. The information will be used to update our database AND will be included in your listing in the reprint of the 2003 IHRA Locator.

Please indicate with an "X" the categories you currently sell or WOULD LIKE TO SELL and fax the survey back to us — at 312-240-1005 — ASAP.

Our currently defined categories include:

- Bakeware
- Closet & Storage
- Cookware
- Decorative Access.
- Furniture / RTA
- Gadgets & Cutlery
- Giftwares
- Hardware
- Housewares
- Small Electrics
- Table Top
- Textiles

"Other" categories, as defined by IHRA members and the industry include:

- Albums
- Auto Cleaners
- Bath
- BBQ.....
- Beverageware
- Books
- Candles
- Cameras
- Candy
- Christmas
- Cleaning
- Clocks
- Closet Storage/Organization
- Coasters
- Collectables
- Computer Software
- Consumer Electronics

- Craft Storage
- Dinnerware
- Electrical
- Flatware
- Floorcare
- Framed Art
- Furniture
- Garage Storage.....
- General Merchandise.....
- Gourmet Food.....
- Halloween
- Health & Beauty
- Home Security
- Household Cleaners
- Juvenile
- Kitchen Cabinet/Drawer Storage.....
- Lamps
- Laundry
- Lawn & Garden
- Lighting
- Lumber & By-Products
Raw Materials
- Medical
- Microwave Ovens
- Mirrors
- Napkin Holders.....
- Novelty
- Office
- Oral Irrigators
- Organic & Natural Food
- Outdoor & Indoor
- Party Goods
- Personal Care.....
- Pet Supplies.....

- Photo
- Picture Frames
- Placemats
- Plastics
- Plastic Storage Totes/Bins
- Power Toothbrushes
- Refrigerators
- Safety
- Salt & Pepper Shakers
- School Supplies.....
- Scrapbooks
- Seasonal Furniture
- Seasonal Outdoor
- Serving Bowls/Platters
- Sewing Notions.....
- Shower/Bath Caddies
- Sinkware
- Snacks
- Software
- Sporting Goods
- Stationery.....
- Tablecloths
- Toiletry Products
- Tools.....
- Toys
- Trays
- Video & Prerecorded
Tapes & CDs.....
- Wall Decor
- Washers
- Water Coolers
- OTHER:

Company _____

City/State _____

Fax to: 312-240-1005



**IHRA Members are invited to attend.
Same registration fees as ERA, MANA & NEMRA**

Keystone 2003

Will "Raise the Bar" of Rep Firm Management

September 10-14, 2003

at Saddlebrook Resort near Tampa, FL

Manufacturers' representatives and agents in all industries are invited to "raise the bar" of their firms' management by participating in a new event to be co-sponsored by the Electronics Representatives Association (ERA), National Electrical Manufacturers' Representatives Association (NEMRA) and the Manufacturers' Agents National Association (MANA). KEYSTONE 2003, a summit for professional manufacturers' representatives, is scheduled Sept. 10-14, 2003, at the Saddlebrook Resort near Tampa, Fla.

"It should not take long for reps to recognize and remember the name of the new event," says NEMRA's incoming chairman, Sam E. Johnson, CPMR, of Electra-Tek Carolinas, Inc., Greensboro, N.C. "We chose 'keystone' because it means something that is depended upon for support," he explains. "Our associations are keystones for our members, and this event will be a keystone for the participants."

Henry Bergson, president of NEMRA, describes Keystone 2003 as the first-of-its-kind gathering and "the place where the best and the brightest in the professional field sales business will come together. Our attendees will be the reps who are doing a good job running their firms but who want to raise the bar of their individual firms' performance and operation."

Ray Hall, executive vice president and CEO of ERA, adds, "Roundtable discussions among the attendees and plenty of time for networking are the highest priority in our program planning. Reps tell us they want more opportunities to learn from each other by exchanging ideas and sharing their best practices. Keystone will deliver those opportunities."

For MANA, Keystone 2003 will be a new type of venture. Helen Degli-Angeli, the association vice president, notes, "Some of our members responded to a recent education survey with a suggestion that MANA sponsor an annual conference in a resort location. Keystone will fill that need by providing a timely educational program in a relaxed environment."

A major focus for the Keystone program committee will be the "take-aways" -- the information, strategies and how-to tips that attendees will take home. Assistance and support to help participating reps implement those "take-aways" will also be incorporated into the overall program.

Further information on Keystone 2003 will be available shortly from the program planning committee. In addition to Johnson, Bergson, Hall and Degli-Angeli, that committee includes four representative firm owners and three association staff members.

Other committee members from ERA are: Mark Conley of O'Donnell Associates North, San Jose, Calif.; Dave Norris of Norris Associates, Hingham, Mass.; Bryan Shirley, CPMR, of Colrud-Lowery, Inc., West Deptford, N.J.; and Tess Hill of the ERA staff. Additional committee members from NEMRA are: John Greenwald of I-PRO, Inc., Denver, Colo.; and Nancy Sciotto, the association vice president of operations. The second MANA committee member is Joe Miller, the association president and CEO.

Complete information and registration is available on the website:

<http://www.era.org/conference/keystone.pdf>

**IHRA Members are invited to attend.
Same registration fees as ERA, MANA & NEMRA**

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A directory of housewares
representatives by territories
covered, type of products handled,
type of customers sold to/through and
complete details about their companies.

Instant *HOT* Lines

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provides immediate information
on *your line, only*, to reps in
specific territories or throughout
The World

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If you're not a member of IHRA, you
owe it to yourself to join the organization
that is your voice in the industry and the
manufacturers' resource for finding
**Well-Qualified, Performance-Committed,
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For complete information and
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