NWA Pension Plan
What Happens in a Merger? ©

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Pension Plan Primer

- Pension and Profit Sharing Plans are governed by Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code (IRC).
- Two main goals – protection of plan assets and payments to participants and inducing sponsorship and participation through favorable tax treatment.
- Complex regulatory universe – both statutorily, e.g., ERISA and IRC and administratively, DOL and IRS

Changes

- Complex regulatory universe – nothing can be done quickly, casually, or without notice to plan participants.
- NWA and Delta plans are significantly under-funded and frozen
  - NWA frozen as of 9/30/2006
  - New DC plan in effect post-bankruptcy
    - Company profit sharing contribution, no participant salary deferral necessary
    - Ranges from 3% to 6% based on age and years of Vesting Service

Delta Plans

- Traditional Defined Benefit Plan converted to Cash Balance Plan in early 2003.
- Cash Balance Plan was frozen in 12/2005.
- A Cash Balance Plan (CB Plan) is a type of DB plan so it is covered by the PBGC insurance program.
- Under a CB Plan hypothetical accounts keep track of accrued benefits and the amount of interest earned thereon stated in the CB Plan.

Delta’s DC Plan

- Delta also has a DC Plan.
- There is a Company contribution of 2% for all employees.
- Delta also matches up to 5% of employee deferrals.
- With no contract, all Delta’s benefits are subject to change at any time and employees have no right to challenge any Company action other than through federal court litigation filed and financed by an individual flight attendant.

Magic Words

- ERISA requires that all pension and profit sharing plan monies be "held in trust."
- Neither the Company nor any creditor or anyone else can access plan monies.
- Named "fiduciaries" are charged with prudently investing and administering these monies.
- Under ERISA, a plan participant's "Accrued Benefit" is protected, in fact, up to guarantee limits, this benefit is insured by the PBGC.

“Accrued Benefits”

- Your accrued benefit under the Pension Plan is the benefit you earned up to the date the plan was frozen.
- Subject to the PBGC’s guaranty limits in the event of termination, nothing can reduce that benefit.
- ERISA section 411(d)(6), the “anti-cutback” provision protects accrued benefits.

Airline Funding Provisions of PPA

- The Pension Protection Act of 2006 (PPA), section 402, gave commercial airlines special funding rules for under-funded pension plans.
- Airlines may elect to have 17 years rather than a 7 or 10 year schedule to bring the plan up to certain funding standards.
- If such an election is made the plan must be frozen -- no increase in plan liabilities is allowed while the plan is under-funded.
- One estimate of total under-funding of both plans is about $9 billion.

Merger

- What will happen to the DB pension plan if a merger is accomplished?
- Probably nothing given the degree of under-funding of each plan and NWA's and Delta's election under section 402 of PPA.
- No regular termination of a plan while so under-funded.
- Distress termination outside of bankruptcy theoretically possible but practically impossible.
- Plan sponsor would have to prove that (i) plan termination is necessary to stay in business or (ii) the costs are unreasonably burdensome solely as a result of a decline in the workforce covered by the plan, and (iii) the PBGC approves the termination.

Profit Sharing Plans in Merger

- Profit sharing or 401(k) plans can be merged under common administration and recordkeeping.
- Notice to plan participants would be necessary.
- Individual accounts would be maintained.

Change in DB Plan Terms

- If allowed under ERISA, the IRC, and the PPA, either plan’s terms could be changed.
- Would probably require IRS approval while under the airline funding election.
- Would require AFA approval if the NWA CBA continues or a new Delta contract is negotiated.
- No accrued benefit could be reduced.
- Probably no merger of plans until certain level of funding is achieved.
- No regulations yet under PPA.

In the Event of Future Termination

- PBGC Guaranty generally covers:
  - Normal and early retirement benefits
  - Disability benefits when disability occurs prior to plan termination
  - Certain survivor benefits

  PBGC Guaranty generally DOES NOT cover:

  benefits > maximum guaranteed amount

  benefit increases or benefits < 5 years in plan

  non-vested benefits

  non-pension benefits, e.g. health, severance, vacation, life insurance, certain death benefits