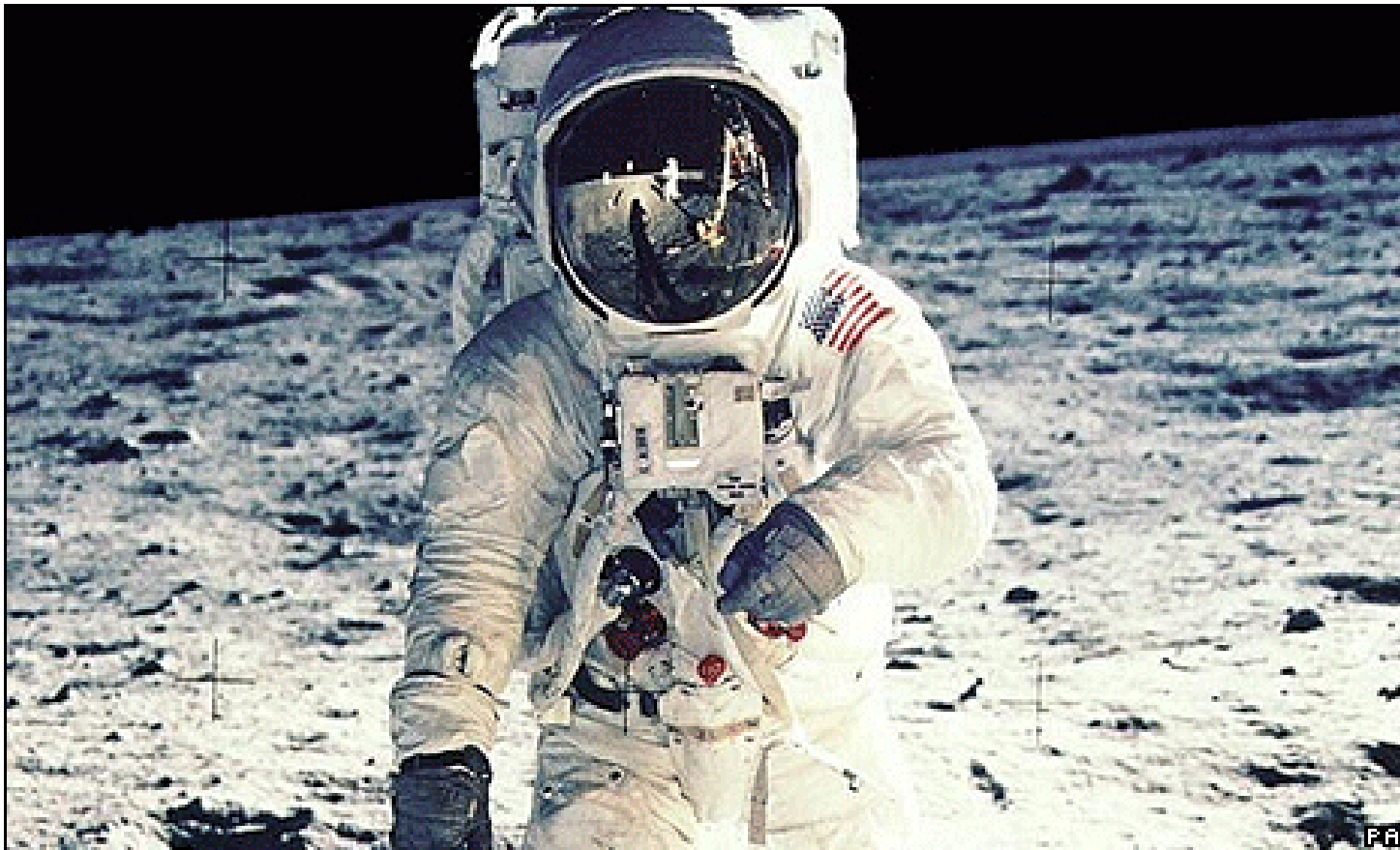


EQUITY BASED MEASURES

an M&A perspective

TO BOLDLY GO WHERE ... (ALMOST)
ANYTHING IS POSSIBLE



SIGNIFICANT NEGOTIATION ASPECTS

- Much depends on what side of the table you are on
 - Purchaser or the Seller
 - General employees, executives, “special cases”
- Different treatment for different types of awards
 - Options, Free Share Awards, Restricted Stock
 - Vested (owners) and unvested awards (contingent rights)
 - Special circumstances (really need to review the plan documents, almost anything is possible)
- Big problem
 - Inconsistency in plans, especially on “change of control”
 - Ensure same treatment & can future proof this (EGM)



DIFFERENT COURSES FOR... WHAT TO DO WITH EXISTING AWARDS

- Vested share awards
 - Generally are shareholders (funny provisions)
 - Make sure that they are dragged along with the deal
- Unvested awards
 - Accelerated
 - Again ensuring that these are dragged along is important
 - May trigger tax event for the company and/or employee
 - Important to be conditional on completion (documents)
 - Cancelled
 - Consideration maybe trigger employers PRSI
 - Employee relation issues
 - Continued
 - Becoming more common



WHAT YOU DON'T KNOW CAN'T ...DUE DILIGENCE IS VITAL

- The purchaser needs to fully understand the plans
- As the seller you need to sure that your documentation is squeaky clean and up to date
 - More than uploading these to the data room
 - Lawyers and financial advisors will pour over them and will flush out and “hidden surprises”
- Major DD points
 - Company law -Authority to allot shares, Shareholder approval, financial assistance (criminal)
 - Employment law - Age discrimination (direct/indirect: older or younger), pensions
 - Tax points, Accounting Provisions, Listing Rules
 - Red flag items (re-prising, back-dating, cancellation & re-issues)



GOOD FOR THE GOOSE... THE IMPORTANCE OF SPECIFIC & LOCAL ADVICE

Q's for Purchaser

- What impact on of the plans on the value of the deal?
- Dealing with the widow between signing and completion?
- Impact of large windfalls on key employees?
- Contentious employee issues
 - (e.g. Stock options being a condition of employment)
- What is on offer post close to employees?
 - (private company acquirer)

Q's for Seller

- Are your plan documents up to date
- Are there any cleaning up points needed
- Do you need gto consider an EGM?
- What are your employee expectations (large driver of value, losing them could reduce the value of the deal)

Do not under estimate the impact of local differences

- E.g. The US deferred comp rules are significantly different to Irish rules

