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Contractual vs. Actual Separation Pay Following CEO Turnover

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Using hand-collected data, we document the details of the ex ante severance contracts and the ex post separation pay given to S&P 500 chief executive officers (CEOs) upon departing from their companies. We analyze what determines whether or not a CEO receives separation pay in excess of the amount specified in the severance contract. We find that *discretionary* separation pay is given to about 40% of departing CEOs and is, on average, $8 million, which amounts to close to 242% of a CEO's annual compensation. We investigate the determinants of discretionary separation pay and find, for example, that discretionary separation pay positively correlates with weak internal governance in cases of voluntary CEO turnover but not when the CEO is forced out. We also find that discretionary pay is higher when the CEO has a noncompete clause in her ex ante severance contract. Event study analysis suggests that shareholders benefit from discretionary separation pay in forced turnovers but not in voluntary ones. Our overall results help to shed light on the complex role of discretionary separation pay in the bargaining game between boards and departing executives.

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1. Introduction

Executive compensation has been a topic of great interest for shareholders, government regulators, and academic studies, mainly because executive pay is an important component of the corporate governance structure of a company.[1] Compensation contracts can alleviate agency problems, but they can also serve as indicators of whether or not a board of directors is acting in the interest of shareholders.

In this paper, we focus on the severance component of executive pay and identify cases in which departing chief executive officers (CEOs) receive separation pay that is in excess of their severance agreements. We define this difference as *discretionary* separation pay (DSP) and find that about 40% of the departing CEOs in our sample obtained positive DSP while the remaining 60% received separation pay in accordance with the contractual obligations of the firm.

The goal of our paper is to investigate the determinants of DSP and to provide some suggestive evidence on whether discretionary pay is a result of a board of directors maximizing shareholder value, poor internal corporate governance, or a mix of the two. We examine this question by exploring the cross-sectional determinants of the *difference* between (ex post) separation pay and (ex ante) severance.[2]

We use hand-collected data to analyze 609 CEOs of S&P 500 companies who left their companies between 1993 and 2007, and we document the details of the firms' contractual obligations to the CEOs upon departure. We then compare the dollar awards specified in these ex ante severance agreements with the reported actual separation pay given to each CEO upon her departure. We find that 363 of the departing CEOs received separation pay in accordance with their severance agreements, whereas the remaining 246 got more than what the firm was contractually obligated to pay them. In addition, we find that discretionary separation pay is, on average, close to $8 million.

To explore whether DSP represents something that is harmful to shareholders, or whether DSP represents an optimal response by the board to the imminent departure of the CEO, we conduct our empirical analysis by

[1] See Murphy (1999) for a survey of the literature on executive compensation, and see Bebchuk and Weisbach (2010) and Frydman and Jenter (2010) for a survey of the literature on corporate governance.

[2] Shareholder rights activists, as well as the media, argue in numerous articles (e.g., Kavilanz 2007, Goldman 2011) that CEOs receive millions of dollars in severance even after poor firm performance and that separation agreements do not fit the pay-for-performance paradigm.

first separating the sample according to whether the CEO turnover event was forced or voluntary.[3]

Our empirical results show that DSP positively correlates with having a noncompete clause in the ex ante severance contract.[4] Although this result is true regardless of whether the turnover is forced or voluntary, we also find that different factors determine the level of DSP in voluntary and in forced turnovers. For example, we find that in voluntary departures, greater levels of DSP are associated with poor internal corporate governance, as indicated by fewer independent directors on the board, lower ownership by active institutional shareholders, busier boards, or a departing CEO who was a founder of the firm. In contrast, internal governance has no impact on DSP levels in forced turnovers.

CEOs who are forced to depart receive higher DSP in cases when the firm is not doing well, as measured by a large decline in the stock price over the three-year period prior to the turnover as well as high leverage and low credit rating.[5]

Finally, we conduct an event study around the announcements of the detailed separation agreements and compute announcement returns for four subsamples based on whether the turnover was forced or voluntary and whether the turnover event included a positive or zero DSP. We find that for the forced turnover events, the difference in announcement returns between CEOs with positive DSP and those without is positive and significant for both three- and seven-day windows. In contrast, for the voluntary turnover events, the difference in announcement returns between CEOs with positive DSP and those without is negative and significant. This suggests that shareholders view DSP as beneficial overall in forced departures, but they also view it as harmful in voluntary departures.

In sum, our findings show that when a CEO departs voluntarily, she is able to negotiate for extra separation pay when governance is poor and that, in these cases, the announcement of a positive DSP is associated with a negative stock return. In contrast, our findings suggest that when the CEO is forced out, a firm gives higher DSP when it is in a weaker financial state. In these cases, the announcement of a positive DSP is associated with a positive stock return. One possible explanation for these findings is that, in cases of forced turnovers, the extra separation pay is used strategically by the board to avoid a long and costly battle with the departing CEO.[6]

Our analysis is based on the theoretical notion that contracts are incomplete (e.g., Hart and Moore 1988), and hence, contract renegotiation may take place. The theoretical work of Almazan and Suarez (2003) analyzes severance contracts, arguing that these help reduce the incentive of boards to replace CEOs too frequently and the incentive of CEOs to entrench themselves. One interpretation of their work is that ex post separation contracts allow for a more efficient turnover process. Ju et al. (2014) and Van Wesep and Wang (2014) study the effect of severance contracts on firms' risk-taking activity. Manso (2011) shows that severance pay is part of an optimal contract that encourages innovation.

Recent empirical studies look at related issues. For example, Schwab and Thomas (2004), Zhao (2013), and Gillan et al. (2009) study features of CEO employment agreements. Papers that focus directly on severance and/or separation pay include Rusticus (2006), Yermack (2006b), Huang (2013), and Rau and Xu (2013). Rusticus and Rau and Xu examine the firm-level determinants of whether or not a severance agreement is part of a CEO's contract. Huang looks at the impact of severance contracts on future firm performance and the risk-taking activities of CEOs.

Most closely related to our work, Yermack (2006b) investigates the determinants of separation pay *levels* while noting that much of his sample includes CEOs who obtain separation pay but do not have severance agreements. The main contribution of our paper is that we calculate the actual *discretionary* separation pay of each departing CEO, which allows for a clean test of its determinants. This ends up being important because the empirical analysis that we conduct yields several statistically significant results that are not in his study. For example, Yermack (2006b) does not find significant results for the sample of CEOs who depart voluntarily. By contrast, we show that discretionary pay in the voluntary sample is related to several important governance measures. We also show that announcement returns for this sample are negative when discretionary pay is given. Therefore, our study is the first to provide empirical evidence for why CEOs who depart voluntarily may receive discretionary separation pay.[7]

Note that the benefit of looking at DSP and not at total separation pay is that DSP is determined by the negotiation between the board and the CEO at the

[3] Namely, because of the incompleteness of contracts, the board may change the agreed-upon severance payment in a manner that increases the efficiency of the turnover process.

[4] We also find that discretionary pay is negatively correlated with having a noncompete clause in the ex post separation contract, but this result is marginally insignificant (p-values between 11% and 21%).

[5] Our finding that poorly performing CEOs get larger pay is reminiscent of Garvey and Milbourn (2006), who show that CEOs are not penalized for bad luck.

[6] Further discussion of this hypothesis and additional anecdotal evidence of the ability of CEOs to prolong the separation process and lower firm value is provided by Dalton et al. (1993).

[7] Our analysis of the sample of forced turnovers also yields different results, partly because of our different dependent variable and partly because we are looking at different independent variables.

time of departure. In contrast, looking at the level of separation pay would convolute the empirical analysis because some observations would be determined by initial negotiations (when the separation contract is the same as the initial severance contract) while other observations would be determined by later negotiations (when the separation contract pay is higher than what is specified in the initial severance contract).[8]

Overall, our paper provides a rich set of new empirical results and offers some new insights that suggest that at times DSP is beneficial to shareholders while at other times it is detrimental to shareholders. The remainder of the paper is organized as follows. In §2, we provide institutional background on CEO severance agreements and ex ante payment obligations to departing CEOs. In addition, we discuss the details of the departing CEOs' reported separation agreements. In §3, we describe the sample selection process, data, and research design. The analysis is presented in §4, and in §5 we present robustness tests. Section 6 concludes.

2. CEO Severance and Separation Agreements

U.S. Securities and Exchange Commission (SEC) regulations require all firms to file CEO severance and separation agreements in their financial statements. The ex ante severance agreement between a firm and a CEO is either written up in a formal agreement or mentioned less formally in a proxy statement, where a firm may describe what would trigger the immediate vesting of CEO equity.

The severance agreement, signed at least one year prior to the CEO turnover event, is a contractual agreement between the CEO and the company that specifies the CEO's benefits and obligations in the event that she leaves the position.[9] In our sample, 199 CEOs (approximately 33% of the sample) had a severance contract at the time of departure. This number is comparable to the number reported in Gillan et al. (2009).

The separation agreement is a contract between the CEO and the company that is signed during the separation negotiations, right before the company and the CEO agree to part ways. In our sample, 287 of the 609 events have separation agreements (47%).

Comparing the dollar value of the ex ante contractual obligations of the firm with the dollar value of the reported CEO separation contracts, we find that around 40% of our departing CEOs received discretionary separation pay.[10]

Schwab and Thomas (2004) provide a summary of discussions with legal practitioners who are actively engaged in CEO employment/separation agreement negotiations. Based on their description, companies normally produce employment agreements that contain severance compensation. A typical severance contract would detail payments, usually equaling multiple times the CEO's base salary and bonus, as well as continuing/immediate vesting of existing executive stocks and options. In return, CEOs usually agree not to compete with the company for a period of one to two years.

For the CEO to receive the promised severance amount, the turnover event has to be either "without cause" or due to "good reason." The term "for cause" is specifically defined in the contract and usually includes conditions such as willful misconduct or breach of fiduciary duties, but it does not normally include CEO incompetence or poor firm performance. Similarly, "good reason" is narrowly defined in severance agreements. An example of "good reason" is involuntarily relocating the CEO.

Based on SEC regulations, firms usually file CEO severance and separation agreements as attachments to a 10-K, 10-Q, or 8-K. In addition, the proxy statement contains a summary of the principal terms of the severance and the separation contracts. We obtained the terms of severance agreements (ex ante contracts) and/or any payment commitments such as vesting of options from 10-K, 10-Q, 8-K, and proxy statements; the terms of separation agreements (ex post contracts) were obtained from proxy statements by looking at agreement summaries.

The appendix provides an example of a severance and a separation agreement summary obtained from a proxy statement. In this example, we obtain information about the ex ante severance contract that was signed between Sovereign Bank and Jay S. Sidhu in 1997, as well as the actual ex post separation pay following his dismissal in 2006. The ex post separation agreement specifies that, in addition to the benefits detailed in the ex ante severance agreement, the firm accelerated the vesting of part of Sidhu's equity awards, worth $9 million (these would have otherwise been terminated) and gave him a one-time special payment of $1.0 million.

3. Data Description

The main data set consists of hand-collected information regarding the contractual (severance contract) and the

[8] For example, high separation pay can be a result of a CEO bargaining for a high severance several years prior to the turnover or having a low severance and bargaining for higher separation pay at the time of departure.

[9] We exclude all CEO departures that are related to change-in-control events following mergers or takeovers. Thus, we specifically exclude all golden parachute contracts. See, for example, Lambert and Larcker (1985) for a study on golden parachutes.

[10] Note that some CEOs had severance contracts in place, but their contracts remained untriggered because the turnover events were normal retirements (99 cases). Moreover, a normal retirement is sometimes accompanied by additional separation pay.

actual (separation contract) payments made to a CEO following the turnover event. We collect information for every CEO who left her position with an S&P 500 company during the time period between 1993 and 2007. This sample is restricted to those firms with information available on CRSP, Compustat, RiskMetrics, Thomson Reuters, and ExecuComp databases.

In total, we identified 609 events that meet these criteria. For each of these 609 events, we read the 10-K, 10-Q, 8-K, and proxy statements and hand-collected details of any existing severance agreement and any other contractual commitment to make payments that existed prior to the turnover event. In addition, we collected information on any separation agreement signed by the company and the CEO at the time the latter left the position. We located these data by searching for terms such as "employment agreement," "severance contract," "severance agreement," "separation agreement," "termination of employment," "severance," "separation," "contract," "agreement," "executive agreement," "employee agreement," and "termination arrangement." We required that the severance contract be in place at least one year prior to the turnover event. For each agreement, we recorded the terms of the agreement, such as one-time severance amount, multiples of salary and bonus, future consulting fees, immediate vesting of restricted shares and options, additional pension benefits, contract duration, reasons that can trigger the contracts, noncompete and/or nonsolicit clauses, healthcare and life insurance benefits, gross tax payment, legal fees, access to a private jet, and office and secretarial support.

For the separation agreement, we collected similar information about the specific actual payments that were made to the departing CEO. This separation agreement may or may not be exactly the same as the previous severance contract.

For each CEO, we calculated the dollar difference between the amounts paid to upon departure and the amounts that the firm was required to pay based on the existing agreements. We obtained the dollar amounts from the ex ante severance agreement or the severance contract, either directly from the severance contract, if supplied by the firm, or by calculating the contractual dollar amount by employing the most recent year of CEO compensation data if the contractual terms involve certain multiples of salary and bonus. For instance, if the contract awarded the CEO with five times her salary and bonus, then we obtained the dollar amount by multiplying the CEO's most recent salary and bonus by 5. In addition, if the severance contract contained terms for immediate vesting of restricted options, we used unexercised unexercisable option values to estimate the amount, which is equal to the estimation of the intrinsic value of the unexercisable options at year end; and for restricted shares, we estimated them with unvested stock values.[11]

As for the actual separation payment, we obtained this actual dollar amount directly from the separation contract, if provided by the company; otherwise, if a separation contract is absent, we search the proxy statement for any additional "good-bye" payment given to the CEO. For unvested restricted stocks and options, we obtained the estimated value of such stock and option grants from the separation agreement directly (if provided in the proxy statement); otherwise, we estimated the amount by using unexercised unexercisable option values and unvested stock values. If the CEO stayed as a chairperson or consultant and received compensation that was the same as or more than the compensation received as a CEO, we included that amount as well.

When calculating the difference between the severance and separation dollar amounts, we also considered pension plans. For example, if the severance did not mention the CEO's pension but the separation agreement allowed for additional years of service credited toward the CEO's pension plan, then we obtained the present value of these benefits from the proxy statement. For severance and separation calculations, we did not include the gross tax payment, health insurance costs, legal fees, and fringe benefits, such as access to a private jet and office and secretarial support, because of the difficulty of valuing these benefits.

Our classification of the turnover event starts by looking at the proxy statement around the departure date and identifying the main reason for departure. Many cases include the words "retire," "resign," or "deceased," or they do not provide any definitive information. For each case, we then proceed to read news articles to further explore whether the CEO was forced out or whether she voluntarily left. We follow the methodology used in Parrino (1997) and classify whether the turnover is forced or voluntary using a three-step process.[12]

In Table 1, we report the definitions of variables used in the analyses. For financial and governance data, we use the information from the closest year end to the CEO's departure. In Table 2, we provide descriptive statistics on contract, company, and CEO characteristics. For the full sample of 609 CEOs, we see that 246 CEOs

[11] We account for all option amounts and the vesting provisions as done in Yermack (2006b).

[12] First, we classify the departure as forced if the *Wall Street Journal* reports that the CEO was fired, forced out, or departed as a result of unspecified policy differences. Second, we classify the departure as forced for all other departing CEOs under the age of 60 who were not reported as leaving because of death, poor health, acceptance of another position, or retirement. Finally, we investigate these forced departures further using additional news sources to verify that the CEOs did not leave voluntarily.

Table 1 Variable Definitions

Variable	Definition
% of independent directors	Percentage of independent directors on the board
3-year market-adjusted return	The return on the firm's stock, adjusted using the CRSP value-weighted index over the three years preceding the CEO turnover event date
Active institutional ownership	The percentage of the firm's total shares outstanding that are held by investment advisors and investment companies
Actual – contractual pay ($ millions)	Dollar differences between what CEOs are promised and what they actually obtain
Actual – contractual pay/total compensation	*Actual – contractual pay* divided by the CEO's total compensation from the last year
Actual pay ($ millions)	Separation payments amounts CEOs actually received
Assets	Book value of total assets
Busy board (%)	The percentage of independent directors who sit on three or more boards
Contractual pay ($ millions)	The amount specified in the severance contract that a CEO is entitled to, signed at least one year prior to the departure event
CEO tenure at the firm	Number of years the CEO has been with the firm as an employee
Forced (*N*)	Number of CEOs who were forced out of the firm
Founder (*N*)	Number of CEOs who are founders or cofounders of the firm
G-index	Anti-shareholder rights index
Leverage	Long-term and short-term debt to market value of equity
Next CEO from outside	An indicator that takes the value of 1 if the new CEO is hired from outside the firm and 0 otherwise
Noncompete in ex ante severance agreements	An indicator that takes the value of 1 if the CEO has noncompete clause in the severance agreement and 0 otherwise
Noncompete in ex post separation agreements	An indicator that takes the value of 1 if the CEO has noncompete clause in the separation agreement and 0 otherwise
Nonsolicit in ex ante severance agreements	An indicator that takes the value of 1 if the CEO has nonsolicit clause in the severance agreement and 0 otherwise
Nonsolicit in ex post separation agreements	An indicator that takes the value of 1 if the CEO has nonsolicit clause in the separation agreement and 0 otherwise
S&P credit ratings	Standard & Poor's opinion on the general creditworthiness of the firm
Severance contract duration (years)	Average term of severance agreements, if existing
U.S. real GDP growth rate	U.S. real gross domestic product after adjusting for inflation

obtained additional severance payments at the time of departure. The difference between the actual and promised pay for the full sample of 609 CEOs is, on average, $3.26 million.[13] Specifically, for the full sample, the actual separation pay is, on average, $4.48 million, whereas the contractual severance pay is an average of $1.22 million. Whenever a CEO has an ex ante severance contract, we observe that it is signed, on average, more than six years prior to the turnover event.

The average tenure of a CEO is 24.79 years, and founding CEOs represent less than 10% of the sample, totaling 52.[14] Out of 609 events, we are able to identify 112 CEOs (about 18%) who were forced out, which is consistent with previous studies (e.g., Parrino 1997, Huson et al. 2001, Yermack 2006b). Our sample of CEOs tends to own around 3.66% of the firm's equity (similar to what Griffith 1999 finds). An average of 72% of board members in our sample are classified as independent (similar to Sundaram and Yermack 2007), and 16% of our sample is classified as having a busy board, which is similar to the findings by Fich and Shivdasani (2006).

In Table 2, we also separate the sample into two subsamples based on whether a CEO received a positive DSP. Out of 609 observations, 246 CEOs had nonzero DSP, with an average difference in pay totaling more than $8 million. In contrast, 363 CEOs received separation payments that were in accordance with their existing agreements. Specifically, for the 363 CEOs without differences in their exit packages, the actual and contractual severance pay, on average, is $1.03 million. On the other hand, for the 246 CEOs with differences in their exit packages, the average actual separation pay is $9.57 million, whereas the average contractual severance pay is $1.49 million. The table shows several differences between the two subsamples. For example, CEOs with discretionary pay tend to have noncompete clauses in their contracts.

In Table 3, we report additional contract values when separating the sample based on whether the turnover was voluntary or forced. The table shows that DSPs are made in both cases and at about the same frequency. Conditional on receiving DSPs, CEOs who are forced out tend to receive higher separation pay than CEOs who depart voluntarily. For example, for the subsample of CEOs who were forced out and ended up with

[13] We include normal retirements because, even in normal retirements that do not require severance payments, we observe some CEOs who received additional payments. Thus, part of what we explore is why in some normal retirements there is a nonzero separation pay.

[14] CEO tenure includes years before CEOs are promoted to the CEO position.

Table 2 Descriptive Statistics

	Total sample (N = 609)		CEO w/o a difference in exit package (n = 363)		CEO with a difference in exit package (n = 246)		
	Mean	SD	Mean	SD	Mean	SD	t-Value
			Panel A: Contract characteristics				
Actual − contractual pay ($ millions)	3.26	9.69	0.00	0.00	8.08	13.93	
Actual pay ($ millions)	4.48	12.38	1.03	4.92	9.57	17.34	
Contractual pay ($ millions)	1.22	6.64	1.03	4.92	1.49	8.57	
Severance contract duration (years)	6.23	4.15	5.46	2.91	6.98	5.01	
			Panel B: CEO characteristics				
CEO tenure at the firm	24.79	10.82	24.92	10.95	24.60	10.65	0.36
CEO with noncompete clause (= 1)	0.082	0.275	0.039	0.193	0.146	0.354	−4.36***
CEO with nonsolicit clause (= 1)	0.077	0.267	0.036	0.186	0.138	0.346	−4.25***
Forced (N)	112		65		47		
Founder (N)	52		23		29		
S&P credit ratings	102.66	1.31	102.70	1.39	102.61	1.18	0.86
			Panel C: Firm characteristics				
% of independent directors	0.72	0.14	0.73	0.13	0.71	0.15	1.33
3-year market-adjusted return	0.10	28.56	1.53	29.72	−2.01	26.69	1.53
G-index	9.57	2.48	9.74	2.44	9.33	2.54	1.96*
Next CEO from outside (= 1)	0.22	0.41	0.21	0.41	0.23	0.42	−0.45
U.S. real GDP growth rate	0.03	0.03	0.03	0.01	0.03	0.01	−0.57
Busy board (%)	0.16	0.16	0.15	0.17	0.18	0.16	−2.02**

Notes. This table provides descriptive statistics for the sample of 609 S&P 500 CEOs who left their positions as CEOs between 1993 and 2007. Described are contract, CEO, and company characteristics for all 609 events. The statistics are provided for the whole sample as well as for the subsamples of turnover events in which the CEOs received (or did not receive) separation pay in addition to their contractual severance. Variable definitions are given in Table 1.

*, **, and *** denote significance at the 10%, 5%, and 1% levels, respectively.

positive DSPs, the mean difference between actual and contractual (triggered) pay is almost $10.8 million. For the CEOs who left voluntarily and received positive DSP, the mean difference is $7.4 million. For all CEOs with DSP, the discretionary amount is, on average, 2.42 times the CEOs' total annual compensation.

Table 3 Agreement Characteristics for Voluntary and Forced Turnover Events

	CEO w/o a difference in exit package	CEO with a difference in exit package
	Panel A: Voluntary	
Actual payment mean	656,384	7,984,388
Contractual (*triggered*) *payment mean*	656,384	554,167
Actual − contractual payment mean	0	7,430,221
Actual − contractual pay/ total compensation (%)	0	206
No. of observations	298	199
	Panel B: Forced	
Actual payment mean	2,738,913	16,311,615
Contractual (*triggered*) *payment mean*	2,738,913	5,475,091
Actual − contractual payment mean	0	10,836,524
Actual − contractual pay/ total compensation (%)	0	395
No. of observations	65	47

Notes. This table provides the dollar value of the actual and contractual (triggered) severance pay amounts for the sample of 609 S&P 500 CEOs who left their positions between 1993 and 2007. The left column shows actual and contractual exit pay for 363 CEOs who did not receive additional separation pay, and the right column shows both the actual and contractual (triggered) exit payments for 246 CEOs who received additional separation payments. All variable definitions are given in Table 1.

Table 4 provides summary statistics for these variables for the forced sample (panel A) and the voluntary sample (panel B). In panel A, we see that, for the subsample of executives who were forced out, DSP is more likely to be offered to CEOs in firms with lower three-year stock returns and to CEOs with noncompete or nonsolicit clauses in their contracts. Panel B suggests that past performance does not explain DSP for the subsample of executives who left voluntarily, although some measures of governance seem to matter. Noncompete and nonsolicit clauses are also associated with higher DSP. Finally, in untabulated results, we look at the distribution of DSP across size deciles and industry and find that the percentage of CEOs with positive DSP is not concentrated in any particular industry or size decile.

4. Results

Discretionary separation pay may be explained by different factors in the forced and voluntary subsamples. Thus, we conduct the multivariate analysis separately for these two groups. We start by defining the dependent variable as the *dollar value of the difference between the actual and contractual separation pay*, where the contractual pay is the pay specified in any ex ante agreement that was "triggered" by the turnover event (i.e., the conditions for making these payments were

Table 4 Summary Statistics for Forced and Voluntary Turnover Events

	(i) CEO w/o a difference in exit package (n = 363)		(ii) CEO with a difference in exit package (n = 246)		
	Mean	SD	Mean	SD	Means (i) − (ii) t-value
		Panel A: Forced			
% of independent directors	0.75	0.13	0.73	0.17	0.68
3-year market-adjusted return	−5.09	27.48	−18.13	16.31	3.14***
Busy board (%)	0.16	0.14	0.18	0.15	−0.38
CEO with noncompete clause (= 1)	0.09	0.29	0.30	0.46	−2.69***
CEO with nonsolicit clause (= 1)	0.06	0.24	0.30	0.46	−3.20***
CEO tenure at the firm	19.61	9.51	21.16	9.12	−0.87
G-index	9.63	2.59	9.42	2.62	0.42
Next CEO from outside (= 1)	0.43	0.50	0.38	0.49	0.50
U.S. real GDP growth rate (%)	2.78	1.32	3.35	1.09	−2.48**
No. of observations	65		47		
		Panel B: Voluntary			
% of independent directors	0.72	0.13	0.71	0.14	1.18
3-year market-adjusted return	2.97	30.03	1.80	27.26	0.45
Busy board (%)	0.15	0.18	0.18	0.17	−1.86*
CEO with noncompete clause (= 1)	0.03	0.16	0.11	0.31	−3.46***
CEO with nonsolicit clause (= 1)	0.03	0.17	0.10	0.30	−2.98***
CEO tenure at the firm	26.08	10.91	25.41	10.85	0.67
Founder (= 1)	0.07	0.26	0.14	0.34	−2.16**
G-index	9.76	2.41	9.31	2.53	1.97**
Next CEO from outside (= 1)	0.16	0.37	0.19	0.39	−0.75
U.S. real GDP growth rate (%)	3.24	1.25	3.21	1.33	0.26
No. of observations	298		199		

Notes. The table provides descriptive statistics for a sample of 609 S&P 500 CEOs who left their positions as CEOs between 1993 and 2007. Panel A describes the sample of CEOs that are forced out, and panel B describes the sample of CEOs who left voluntarily. '"Mean" under column (i) for each panel shows the mean value for CEOs without discretionary separation pay, and in column (ii), it shows mean values for CEOs with a positive amount of discretionary separation pay. Differences between the mean values in columns (i) and (ii) are computed in the last column. The variables are defined in Table 1.

*, **, and *** denote significance at the 10%, 5%, and 1% levels, respectively.

met). We then analyze the relationship between this variable and several company and CEO characteristics. Because the dependent variable is zero for some of the observations, we employ the Tobit model.

The independent variables, computed at the closest year end to each CEO's departure, measure various dimensions of the governance, financial health, and contractual obligations of each firm.

The multivariate results of the Tobit regressions are reported in Table 5. Panel A in Table 5 focuses on the sample of CEOs classified as being forced out, and panel B focuses on the sample classified as leaving voluntarily.[15]

Model 1 in Table 5 shows that CEOs who are forced out receive higher DSP when stock returns prior to the dismissal event are lower, when leverage is higher, and when firms have poorer credit ratings. These results suggest that firms in the worst financial shape offer higher DSP. In Models 2 and 3, we explore whether governance measures affect DSP in the sample of forced-out CEOs. The results of both models indicate that governance measures do not impact DSP in this subsample.

One possible explanation for the finding that higher DSP is negatively associated with the firm's financial health (while being unrelated to poor internal governance) is that the board offers DSP to reduce the chance of a prolonged and contentious legal or publicly harmful battle with the departing CEO. Hence, the board is willing to pay the CEO more in order to avoid a continued deterioration of the firm's financial position. The idea that giving the CEO DSP could be helpful to shareholders is based on the view that the CEO may take actions, during and after the turnover process, that could negatively impact the firm. The board of directors may then choose to give the CEO additional separation pay if this may benefit shareholders.[16] Thus, in some cases the board can award DSP strategically to lower the chance of a contentious replacement process.

Model 1 in Table 5 also shows that the existence of noncompete clauses in the ex ante severance contracts

[15] Note that we reduce our sample from 609 to 598 because 11 of our turnover events were deaths.

[16] Note that DSP always represents some form of rent extraction that is given to the departing CEO.

Table 5 Tobit Models Predicting Differences Between Actual and Contractual Payments for Forced and Voluntary Turnover Events

	Panel A: Forced			Panel B: Voluntary		
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
3-year market-adjusted return	−0.2269***		−0.1748**		−0.0067	−0.0113
	(−3.05)		(−2.29)		(−0.25)	(−0.42)
Leverage	8.9551***		8.8535***		−0.8026	−0.2950
	(9.98)		(10.11)		(−0.72)	(−0.27)
S&P credit ratings	−2.3270***		−2.7586***		0.4733	0.4025
	(−2.77)		(−3.26)		(0.63)	(0.56)
Next CEO from outside (= 1)	−8.2811***		−9.1354***		−1.0069	−0.2595
	(−2.82)		(−3.07)		(−0.5)	(−0.13)
U.S. real GDP growth rate		513.0900**	203.8368	63.7371		57.0637
		(2.11)	(1.39)	(1.08)		(0.94)
% of independent directors		−11.0367	−0.7387	−11.7515**		−11.9595**
		(−0.63)	(−0.08)	(−2.13)		(−2.13)
Founder (= 1)		8.8764	10.5215	7.4257***		7.3908***
		(0.53)	(1.15)	(2.99)		(2.98)
Active institutional ownership		−7.8782	8.7546	−21.2902**		−20.8982**
		(−0.25)	(0.53)	(−2.06)		(−2.01)
Noncompete in ex ante severance agreements (= 1)	10.9563***		11.7758***	10.7676***		10.7248***
	(2.97)		(3.17)	(3.23)		(3.21)
Noncompete in ex post separation agreements (= 1)	−7.5115		−7.0362	−9.3649		−9.2492
	(−1.32)		(−1.25)	(−1.58)		(−1.55)
log(*Assets*)	3.0616**	10.4669***	3.8282***	1.2317**	1.0773*	1.2648**
	(2.2)	(4.29)	(2.68)	(2.13)	(1.78)	(2.11)
Constant	−282.1573***	−109.5869***	−339.5691***	−7.2849	36.3168	34.4505
	(−3.1)	(−3.81)	(−3.63)	(−1.04)	(0.47)	(0.46)
Industry FE	Yes	Yes	Yes	Yes	Yes	Yes
Total observation	112	112	112	486	486	486
Log likelihood	−207	−240	−205	−951	−965	−950

Notes. The sample includes 609 CEOs who left their firms between 1993 and 2007. After removing 11 cases of CEO death, we analyze 112 events in which the CEO was forced out and 486 events of voluntary turnover. The dependent variable is the difference between actual and contractual exit packages (in millions of dollars). The variables are defined in Table 1 (t-statistics are in parentheses). FE, fixed effects.
*, **, and *** denote significance at the 10%, 5%, and 1% levels, respectively.

is positively associated with DSP, whereas the existence of noncompete clauses in the ex post separation agreements is negatively associated with DSP (but is marginally insignificant). This result holds true for both the forced and the voluntary samples. One possible explanation for these results is based on the revealed preference argument. When the departing CEO agrees to a noncompete clause in the ex post separation agreement, this indicates that the CEO has less interest or ability to go work for a competitor, so the firm may not need to offer her larger discretionary pay. The existence of a noncompete clause in the ex ante severance contract (signed several years earlier) shows that the firm was concerned about the potential damage that could be caused by a CEO leaving for a competitor. Thus, a positive coefficient on this indicator is consistent with the idea that higher DSP is offered to reduce the motivation of a departing CEO to go and work for a competitor.

Although a noncompete clause is part of a legal contract, it is not always binding in practice. Garmaise (2011, p. 378) points out that "covenants not to compete typically have limited geographic scope." In addition, Hyde (2011, p. 6) explains the following:

> Law students laugh when they first learn that the law will only enforce a covenant not to compete ... if the covenant is judged "reasonable." ... Many lawyers ... have told me that no category of litigation is less predictable. Some courts will routinely enjoin the departing employee from competing with the old employer simply because he or she signed a noncompete, without worrying much about the employer's legitimate interest. At the other extreme are states like California and Colorado that never enforce noncompetes signed by employees. In the middle, it is very hard to guess what will be found "reasonable."

The analysis of the subsample of CEOs who leave voluntarily is provided in panel B in Table 5. In Model 4, we find that DSP is positively associated with measures of poor internal governance. In particular, we find that a less independent board, a CEO being a founder, and lower ownership by active institutions are all associated

Table 6 Abnormal Stock Returns Following Announcement of the Disclosure of Discretionary Separation Payment

	(1) Forced-out CEOs with discretionary separation pay	(2) Forced-out CEOs without discretionary separation pay	(1) − (2)	(3) Voluntary CEOs with discretionary separation pay	(4) Voluntary CEOs without discretionary separation pay	(3) − (4)
CAR (−1, +1)	0.16%	−0.88%**	1.04%**	−0.38%*	0.02%	−0.40%*
Standard error	0.18%	0.41%	0.45%	0.23%	0.02%	0.23%
CAR (−3, +3)	0.29%	−0.91%**	1.20%**	−0.25%	0.28%***	−0.53%***
SE	0.24%	0.44%	0.50%	0.16%	0.11%	0.20%
No. of observations	47	65		199	287	

Notes. The table reports abnormal stock returns following the announcement of discretionary separation pay for the sample of CEO turnover events. The sample includes 609 CEOs who left their firms between 1993 and 2007. After removing 11 cases of CEO death, we analyze 112 events in which the CEO was forced out and 486 events of voluntary turnover. The abnormal stock returns are calculated over the interval beginning four days prior to the event day and continuing until one day after. In the left panel, the variable is the mean of the cumulative abnormal stock returns (CAR) for a sample of firms in which the CEO was forced out. In the right panel, the variable is the mean of the cumulative abnormal stock returns for a sample of firms in which the CEO left voluntarily.

*, **, and *** denote significance at the 10%, 5%, and 1% levels, respectively.

with larger discretionary separation pay.[17] Model 4 also shows that DSP is positively associated with the existence of a noncompete clause in the severance contract but not in the separation contract (similar to the forced subsample).

In Models 5 and 6, we repeat the analysis and show that the variables that explain DSP in the forced sample do not explain DSP in the voluntary sample (Model 5) and that putting all these variables in one regression does not change any of our results (Model 6).[18] In all regressions, we include industry-fixed effects.[19]

Following Rau and Xu (2013), we control for the economic conditions at the time of departure, as measured by GDP growth rate, and find that the coefficient on this variable is positive but not always significant. In untabulated results, we control for the change in GDP between the time of the last severance contract (or the CEO's hiring date) and the time of departure, and we find that this variable fails to be significant. We also find (Model 1) that DSP is higher if the incoming CEO is from inside the firm, although this may or may not be consistent with our previous interpretation of the board's intended actions.

To further investigate whether DSP is beneficial or detrimental to shareholder value, we look at event date returns around the disclosure of the details of each separation agreement.[20] The existing literature has shown that the disclosure of new items in a proxy statement conveys new information to the market (e.g., Brickley et al. 1985, Lambert and Larcker 1985, Yermack 2006a).

Table 6 shows the event study results for two event windows, three and seven days around the event, and for four subsamples based on whether the turnover was forced or voluntary and whether the CEO received discretionary separation payments or not. For CEOs who were forced out, the stock returns for the events with positive DSP are positive but insignificant, whereas the returns for the forced sample with zero DSP are negative and significant. The total difference between events with discretionary pay and without is positive 1.04% (1.2%) and significant for the three (seven)-day window.

In contrast, Table 6 shows that for CEOs who leave voluntarily, the announcement returns are negative when discretionary pay is positive and slightly positive when discretionary pay is zero. The difference in announcement returns for voluntary turnovers between firms that offer DSP and those that do not is −0.40% (−0.53%) and significant for the three (seven)-day event window.

These results indicate that shareholders view the net benefits of giving the departing CEO additional separation pay positively when the CEO is forced out and negatively when the CEO departs voluntarily.

Given that in voluntary departures we find that strong CEOs and weak boards are associated with higher levels of DSP, one may wonder why these strong CEOs did not require high severance pay to begin with. One possible explanation is that the initial severance contract was written and negotiated at an earlier date, before the board and the CEO decided to part ways. A separation agreement, however, is signed once both

[17] We follow Almazan et al. (2005) and define the institutions that are active monitors as investment advisors and investment companies.

[18] Our paper also adds to the work showing the value of independent directors (e.g., Weisbach 1988, Byrd and Hickman 1992, Cotter et al. 1997) and institutional investors (e.g., Agrawal and Mandelker 1990, Carleton et al. 1998, Huson et al. 2001).

[19] The results are similar if one removes the industry-fixed effects and replaces the independent variables with industry-adjusted variables, such as industry-adjusted leverage, industry-adjusted percentage of independent directors, etc.

[20] The announcement date is when a firm makes an SEC filing disclosing the details of the separation package. This date is later than the announcement of the turnover, and hence this information relates to the details of the separation contract rather than to the turnover itself.

parties know of the departure. Hence, the DSP that we are measuring empirically captures this changed setting. It is possible that the CEO was not as powerful at the earlier date when the severance contract was negotiated, or at that earlier date, the CEO preferred to use her influence over the board to increase her immediate pay rather than future severance.

5. Robustness

In Table 7 we conduct several additional robustness tests. In Models 1 and 5, we include alternative measures of the governance of the company. Specifically, we measure how busy the independent directors of the board are (see Perry and Peyer 2005, Fich and Shivdasani 2006) and define the variable *busy board* as the percentage of independent directors who sit on three or more boards. In addition, we include the G-index, an external anti-takeover provision measure developed by Gompers et al. (2003). Here, we also find that the governance measures are significant in the voluntary sample (Model 5) but not in the forced sample (Model 1).

In Models 2 and 6, we add a measure of the CEO's tenure. The results indicate that longer tenure is

Table 7 Robustness Test Using Tobit Models for Forced and Voluntary Turnover Events

	Panel A: Forced				Panel B: Voluntary			
	Actual − contractual pay			Actual − contractual total comp	Actual − contractual pay			Actual − contractual total comp
	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6	Model 7	Model 8
3-year market-adjusted return	−0.1521**	−0.1698**	−0.1786**	−1.3119**	0.0005	−0.0011	−0.0120	−0.1522
	−(2.04)	−(2.11)	−(2.39)	−(2.44)	(0.02)	−(0.04)	−(0.44)	−(1.23)
Leverage	8.9267***	8.8878***	9.0118***	56.5581***	−0.4935	−0.5051	−0.2757	3.8287
	(10.10)	(10.04)	(10.69)	(8.29)	−(0.45)	−(0.46)	−(0.25)	(0.80)
S&P credit ratings	−2.5963***	−2.7456***	−2.6797***	−10.0505	0.3802	0.4807	0.4778	1.9434
	−(3.08)	−(3.24)	−(3.29)	−(1.54)	(0.52)	(0.65)	(0.65)	(0.59)
Next CEO from outside (= 1)	−7.8289***	−8.0518***	−9.1537***	−38.4530*	−0.4913	−0.0486	−0.3225	1.5714
	−(2.61)	−(2.68)	−(3.15)	−(1.71)	−(0.25)	−(0.02)	−(0.16)	(0.18)
U.S. real GDP growth rate	247.8240*	208.7689	182.7329	739.3615***	60.0769	57.7160	55.9204	442.5181
	(1.70)	(1.39)	(1.27)	(3.85)	(1.00)	(0.96)	(0.91)	(1.63)
G-index	−0.2678	−0.2942			−0.7210**	−0.6747**		
	−(0.47)	−(0.50)			−(2.34)	−(2.20)		
Busy board (%)	−6.4114				7.5927*			
	−(0.69)				(1.77)			
CEO tenure at the firm		0.2617				0.1665*		
		(0.70)				(1.68)		
% *of independent directors*			−1.7324	−52.3561			−11.1368**	−38.0594
			−(0.19)	−(0.72)			−(1.97)	−(1.52)
Founder (= 1)			10.7243	64.8553			7.7452***	39.0891***
			(1.22)	(0.93)			(3.10)	(3.56)
Active institutional ownership			12.2679	69.9232			−22.0240**	−110.3809**
			(0.76)	(0.57)			−(2.10)	−(2.38)
Noncompete in ex ante severance agreements (= 1)	11.0108***	11.3213***		71.8498**	10.4171***	10.5780***		41.0082***
	(3.05)	(3.10)		(2.52)	(3.09)	(3.14)		(2.78)
Noncompete in ex post separation agreements (= 1)	−6.6772	−7.3536		−27.8513	−10.0108*	−9.7679		−38.5276
	−(1.20)	−(1.31)		−(0.64)	−(1.67)	−(1.62)		−(1.43)
Nonsolicit in ex ante severance agreements (= 1)			14.9610***				6.8355**	
			(3.97)				(2.07)	
Nonsolicit in ex post separation agreements (= 1)			−8.9264				−4.6309	
			−(1.31)				−(0.80)	
log(*Assets*)	3.5333**	3.4872**	3.4865***	7.9953	0.8206	1.0830*	1.2837**	−2.3421
	(2.54)	(2.50)	(2.56)	(0.76)	(1.36)	(1.82)	(2.13)	−(0.87)
Constant	−316.8521***	−334.4630***	−327.0202***	−12.1396*	32.3078	39.6897	41.5462	225.0457
	−(3.39)	−(3.56)	−(3.63)	−(1.74)	(0.43)	(0.52)	(0.55)	(0.67)
Industry FE	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Total observation	112	112	112	112	486	486	486	486
Log likelihood	−205	−205	−202	−297	−955	−955	−953	−1,232

Notes. The sample includes 609 CEOs who left their firms between 1993 and 2007. After removing 11 cases of CEO death, we analyze 112 events in which the CEO was forced out and 486 events of voluntary turnover. The variables are defined in Table 1 (t-statistics are in parentheses). FE, fixed effects.

*, **, and *** denote significance at the 10%, 5%, and 1% levels, respectively.

associated with larger DSP in the voluntary sample and not in the forced sample, suggesting that CEO tenure may represent CEO power. In Models 3 and 7, we replace our noncompete clause variables with nonsolicit clause variables and find that the results are robust. Finally, in Models 4 and 8, we repeat our baseline multivariate analysis with a scaled dependent variable that measures DSP divided by the total compensation of the departing CEO. The results remain mostly unchanged using this specification.

6. Conclusion

In this paper, we document the phenomenon that some CEOs leave their firms with separation agreements that award them larger amounts then those specified in their ex ante severance agreements. We find that weak internal corporate governance explains these DSPs for the subsample of CEOs who depart voluntarily, but not for those who are forced out. For forced-out CEOs, DSP is given in cases where the firm is in a weak financial state, as measured by low stock returns in the three years leading up to the turnover, high levels of debt, and a low credit rating. Event study analysis of stock returns following the announcements of separation agreements suggests that shareholders view DSP as benefiting the firm when the departure is forced but as hurting the firm when the departure is voluntary.

Overall, our paper sheds light on this aspect of executive compensation, which has received limited attention to date, and provides some interesting details about how the board and CEO interact right before the CEO leaves the firm.

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Appendix. Sovereign Bank Severance and Separation Agreements

Ex ante severance agreement[21]: "Sovereign and Sovereign Bank entered into an employment agreement, dated March 1, 1997, with Jay S. Sidhu, which superseded, in its entirety, Mr. Sidhu's then existing employment agreement. Mr. Sidhu's agreement has an initial term of five years and, unless terminated as set forth therein, is automatically extended annually to provide a new term of five years except that, at certain times, notice of nonextension may be given, in which case the agreement will expire at the end of its then-current term. No such notice has been given.

"The agreement provides a base salary, which, if increased by action of the Board, becomes the new base salary provided thereafter by the agreement. In addition, the agreement provides, among other things, a right to participate in any bonus plan approved by the Board and insurance, vacation, pension, and other fringe benefits for Mr. Sidhu.

"If Mr. Sidhu's employment is terminated without cause (as defined therein), or if Mr. Sidhu voluntarily terminates employment for good reason (as defined therein), Mr. Sidhu becomes entitled to severance benefits under the agreement. The term good reason includes the assignment of duties and responsibilities inconsistent with Mr. Sidhu's status as President and Chief Executive Officer of Sovereign, a reduction in salary or benefits or a reassignment [that] requires Mr. Sidhu to move his principal residence more than 100 miles from Sovereign's principal executive office. If any such termination occurs, Mr. Sidhu will be paid an amount equal to five times the sum of (i) his highest annual base salary under the agreement, and (ii) the average of his annual bonuses with respect to the three calendar years immediately preceding his termination. Such amount will be payable in 60 equal monthly installments. In addition, in the event of such termination, Mr. Sidhu will be entitled to continuation of certain insurance and other specified benefits for 60 months or until he secures substantially similar benefits through other employment, whichever shall first occur. Further, Mr. Sidhu will be entitled to additional retirement benefits to which he would have been entitled had his employment continued through the then remaining term of the agreement [including increased benefits under Sovereign's long-term incentive plans]. If the payments and benefits under the agreement, when aggregated with other amounts received from Sovereign and Sovereign Bank, are such that Mr. Sidhu becomes subject to excise tax on excess parachute payments under Code Sections 4999 and 280G he will receive additional payments equal to such excise tax and any incremental income taxes he may be required to pay by reason of the receipt of additional amounts under the agreement. Sovereign estimates that, if Mr. Sidhu had terminated employment as of August 1, 2006 under circumstances entitling him to the above-described severance benefits, he would have been entitled to receive approximately $13 million, exclusive of the non-cash benefits, additional retirement benefits, and any potential excise tax-related payments.

"If Mr. Sidhu's employment terminates by reason of his disability, he will be entitled to continuation of 80% of the annual base salary and bonus described above, less amounts payable under any disability plan of Sovereign, until the earliest of (i) his return to employment, (ii) his attainment of age 65, or (iii) his death. Provision is also made generally for the continuation of insurance and other specified benefits for such period, as well as additional credits for retirement benefit purposes.

"The agreement contains provisions restricting Mr. Sidhu's right to compete with Sovereign and Sovereign Bank during the period he is receiving severance or disability benefits thereunder, except under certain circumstances."

[21] *Source*: http://www.secinfo.com/d14qfp.v1qd.htm (last accessed August 25, 2014).

Ex post separation agreement[22]: "On October 10, 2006, we entered into a Retirement-Resignation and Transition Agreement with Jay S. Sidhu, our former President, Chairman, and Chief Executive Officer and the former Chairman and Chief Executive Officer of Sovereign Bank, in connection with Mr. Sidhu's resignation and retirement. The resignation and retirement came in the face of our threatened termination of Mr. Sidhu's employment without cause, and therefore, we viewed the termination as an exercise by Mr. Sidhu of his right to resign for good reason under the terms of his employment agreement. The Retirement-Resignation and Transition Agreement provided, among other things, that

- Mr. Sidhu resigned as president and chief executive officer of Sovereign and Sovereign Bank effective on October 10, 2006;
- Mr. Sidhu continued to serve as Chairman, with Board-related responsibilities, and as a director of Sovereign and Sovereign Bank through December 31, 2006; and
- Mr. Sidhu will provide consulting services as special advisor to our Board for three years from October 10, 2006.

"Under the Retirement-Resignation and Transition Agreement, we have agreed to honor Mr. Sidhu's employment agreement and Mr. Sidhu received or will receive

- a lump-sum cash payment of approximately $10.5 million, representing the present value of payments due under his employment agreement;
- continuation, for 60 months from October 10, 2006, of life, disability, and medical insurance, also due under his employment agreement; and
- a lump-sum payment of $22,448,671 in cash, which represents the present value of amounts earned by and due to him under the terms of the Enhanced Retirement Plan and the Supplemental Retirement Plan. In 2006, we paid the amounts under the plans that vested before January 1, 2005 (approximately $3.4 million) and we will pay the balance in April 2007.

"In addition, consistent with past practice with respect to senior executive officers who have resigned and retired, we accelerated, as of October 10, 2006, the vesting of equity awards made as part of Mr. Sidhu's annual compensation package from 2003 through February 2006, which equity awards would have otherwise terminated. These awards have a net value to Mr. Sidhu of about $9.0 million based on a price of $24.00 per share for our common stock of which Mr. Sidhu recognized approximately $6.3 million as income in 2006 due to restricted stock and performance unit vesting. Mr. Sidhu will generally have the lesser of 24 months from the effective date of his resignation or the grants' original expiration date to exercise outstanding stock options. In addition, we made Mr. Sidhu a one-time special payment of $1.0 million. We approved the one-time special payment and the acceleration of the vesting of the equity awards in consideration for Mr. Sidhu's resignation from the Board and the boards of Sovereign Bank and Santander on December 31, 2006, an accord and satisfaction of his employment agreement, delivery of a release of claims, and for a number of other concessions and accommodations.

"Mr. Sidhu will also receive payments of $40,000 per month for 36 months for providing the consulting services described above. Mr. Sidhu is not entitled to any perquisites in connection with providing the consulting services or otherwise under the Retirement-Resignation and Transition Agreement. Mr. Sidhu also received fees totaling $36,000 for service as a non-employee director of Sovereign and Sovereign Bank through December 31, 2006.

"Mr. Sidhu also participated in our deferred compensation plans, including our Retirement Plan, which is applicable to all of our team members, and our Bonus Recognition and Retention Program, which is applicable to certain of our senior executive officers. Under these plans, Mr. Sidhu is entitled to his earned and vested account balances which will be paid in accordance with the terms of such plans.

"Under the Retirement-Resignation and Transition Agreement, Mr. Sidhu forfeited approximately $640,000 in value of certain existing unvested restricted stock awards, based on a $24.00 stock price."

[22] *Source*: http://www.sec.gov/Archives/edgar/data/811830/000089322007001191/w31643fdef14a.htm (last accessed August 25, 2014).

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