



The ESOP Association
Mid-Atlantic Chapter Conference

The Roles of the
ESOP Trustee in the
ESOP Valuation Process
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Statutory Backdrop

- The law requires that ESOP-owned employer securities that are not readily tradable on an established securities market must be appraised annually by a qualified, independent appraiser
- The law requires a contemporaneous appraisal by an independent appraiser for the date of a transaction that an ESOP is buying or selling stock in order to satisfy the “adequate consideration” prohibited transaction exemption.

Who is responsible for the valuation?

- The plan document should identify which fiduciary is responsible for obtaining the valuation report and determining the value of the company stock
- Typically, it is the trustee that is the fiduciary responsible for hiring the independent appraiser, reviewing and accepting their valuation recommendation, and setting the share price
- A prudent trustee will document its review and scrutiny of the valuation report (REMEMBER, PROCEDURAL PRUDENCE)

The Valuation is the Property of the Trustee

- Typically, it is the ESOP trustee for whom the appraiser works and delivers its opinion (although the appraiser may work for the ESOP committee or any other fiduciary)
- Trustee should be advised of all material activities involved in the annual valuation process and should actively participate in the due diligence

The Valuation is the Property of the Trustee

- If another fiduciary manages the appraisal process, the ESOP trustee (or other named fiduciary) should require and receive the annual valuation report
- ESOP trustee has the right and responsibility to dismiss and replace the ESOP appraiser when appropriate
- A best practice is a comprehensive report each year, not just an update letter

Other events that require a valuation

- When needed to assess the fairness of a transaction
- Monitoring of capital transactions that could affect value, i.e. redemptions, stock options, etc.

Special Considerations

- Who is entitled to review the valuation report?
- Who can the trustee share the valuation with?

QUESTIONS

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