

# ESOPs and Other Stock-Based Plans

## Practices and Industries

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### PRIMARY CONTACTS

**Susan A. Wetzel**

+1 214.651.5389

**Jesse J. Gelsomini**

+1 713.547.2233

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Haynes Boone lawyers were involved in some of the first Employee Stock Ownership Plans (ESOPs) ever created and helped structure the first major leveraged ESOP transaction. Our decades-long track record designing and implementing ESOPs across many industries enables us to tailor plans to ensure they meet your company's strategic business objectives.

### What is an ESOP?

An ESOP is a qualified profit sharing plan for employees is designed to invest primarily in company stock. Shares can be acquired in various ways. One structure, for example, involves a sale by the company of 30 percent of its stock to an ESOP for cash which is borrowed from a third party lender. The company borrows the funds from the bank, giving a promissory note payable over nine years at a certain rate of interest with equal annual principal payments. The company then loans those funds to the ESOP in exchange for a virtually identical promissory note. The ESOP then uses those funds to purchase the stock from the company.

To establish a plan, a company's board of directors appoints a trustee, who will have the authority to vote stock in the ESOP under most circumstances. The trustee can also purchase stock, pursuant to directions from the board, and sell stock.

### What are the benefits of an ESOP?

- The ESOP offers an opportunity to perpetuate the company's long-term existence, without requiring the loss of current control
- An ESOP can lead to an increase in productivity of employees by giving them a stake in the company and it also rewards long-term employees
- Utilizing an ESOP to purchase stock from shareholders offers significant tax benefits which can enhance the company's credit

### ESOP Implementation

We offer support from the very beginning of the ESOP implementation process:

- Counseling clients about the advantages and disadvantages of various ESOP plans
- Designing the proper ESOP structure for clients and drafting all necessary plan documents and trust agreements
- Negotiating loan documents for leveraged ESOPs
- Drafting memos for companies about converting the company stock fund into an ESOP
- Creating S Corporation ESOPs
- Advising banks that lend money to companies to form ESOPs

## **ESOP Compliance and Ongoing Support**

For entities with ESOPs currently in place, our lawyers ensure that plans are in compliance with ERISA and the Internal Revenue Code and we have broad experience with the following:

- Advising clients about which ESOP plans yield the greatest tax benefit allowable under the law
- Counseling company executives, trustees and others administering plans about their fiduciary duties with ESOP transactions
- Representing clients in the event of an audit of an ESOP by the IRS, the SEC or any other government agency
- Providing guidance to clients about litigation trends affecting ESOPs
- Serving as expert witnesses in litigation affecting ESOPs
- Representing companies, trustees, lenders and shareholders in the sale of stock to ESOPs

## **M&A Transactions**

We advise clients that may involve ESOPs in the sale or acquisition of assets by:

- Handling 1042 Exchanges
- Serving as “Special ESOP” counsel in M&A and other transactions, representing companies, ESOP trustees or financial institutions
- Providing regulatory guidance to clients faced with determining whether an investment includes the acquisition of qualifying employee securities
- Helping draft communications to participants in an ESOP to explain how a proposed M&A transaction will impact the ESOP
- Advising qualified plans about investments in ESOPs or other types of employer securities