Vistula Management Company Becomes Employee Owned
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Editor’s Note

With several “new beginnings” to highlight in this issue of Owners At Work – Vistula Management Company, Select Machine Inc., Lake To River Co-op, Green City Growers, PT Services, New York becoming the 7th state to authorize B corporations, 2012 as the International Year of the Cooperative – we have a “new beginning” of our own to celebrate. You are reading the initial edition of Owners At Work to be published solely in electronic format.

In designing our new OAW, we strived to maintain consistency with a format that has evolved through the years while taking advantage of features of new technologies. For example, you can download a standard PDF of the entire newsletter; conversely, you can view an interactive electronic version; we’ve even created an eBook version suitable for downloading to your Nook or Kindle. All of these can be accessed at our website.

We’ve also continued our use of social media in spreading the employee ownership message. If you have not done so, keep abreast of all things employee ownership, as well as the latest happenings from the OEOC, on Facebook, Twitter, and on the OEOC blog at oeockent.posterous.com.

In my article on “Is There an Ideal Plan?”, I start with the premise that every provision of an ESOP Plan should provide an incentive for every employee of the company to work at all times for the long-term success of the company and conclude that constructing an ESOP Plan with provisions meeting that test will indeed result in an ideal ESOP Plan. Read the article and see if your ESOP Plan facilitates your company’s long-term success or if it might be obstructive to your company’s success.

We hope you enjoy our new electronic format for OAW and welcome your feedback not only about the format but also about any of the articles.
A Recipe for Success: How Lake to River Successfully Launched a Farm to School Program.

The city of Youngstown continues to struggle with access to fresh, healthy foods. Yet, despite the difficulty of shedding the food desert label, in 2009, a group of community organizers and farmers decided to tackle the food insecurity issue head on. By 2011, Youngstown residents Pat Rosenthal and Jim Converse and growers, such as Melissa Miller from Millers Livestock Co and Floyd Davis from Red Basket Farm, formed Lake to River, a cooperative business that functions as a distribution channel between Northeast Ohio farmers and institutional buyers.

Currently, the cooperative has sold local produce to four school districts and two hospitals in Northeast Ohio. Still, rebuilding a local food system has not been easy. Lake to River, however, has been successful because of two primary factors: their decision to start small and their focus on building a relationship between the farmers and the institutions.

Initially, both parties had their reservations. The schools, for example, wanted to venture into buying more local products but didn’t want to purchase from each individual farmer. They also valued the convenience of ordering from a product list provided by national food distributors. For the farmers, many were used to selling retail, not wholesale, and struggled with dealing with large bureaucratic payment systems that meant their checks may come weeks after the initial sale.

In order to get both parties comfortable with each other, Lake to River began with apples. Apples allowed the schools and farmers to begin with a “pilot” period. Schools learned that local apples didn’t all come in the same sizes, some had scabs or bruises, and golden delicious apples were not always in season. Yet, they also learned that local apples taste fresher and that school children finished the entire fruit rather than throwing some of it away. Apples felt less intimidating for farmers, too. They didn’t feel obligated to sell all their products through the cooperative, so the adjustment to the longer payment processing period felt less burdensome.

After selling 30 bushels of apples per week, Lake to River conducted a focus group at the Unitarian Church in Youngstown with four of the schools’ food service staff and several farmers. After building a base with the apples, the focus group session allowed the schools to ask the farmers directly about their other products. The schools loaded the farmers with questions ranging from food safety to availability of products for next fall. Although both parties are continuing to learn about the stakes involved in rebuilding a local food system, starting small and focusing on dialogue has paid off for Lake to River Cooperative.

- Ashley Hernandez

Vistula Management Company Becomes New 30% ESOP

John Kiely, President and sole owner of Vistula Management Company, a 65-employee property manager of low
Income residential units in Toledo OH, was apprehensive about the employees’ reaction to his impending announcement to them of their purchase of 30% of the company stock through the use of an Employee Stock Ownership Plan (ESOP).

“I’ve been planning this transition for 10 years – investigating all kinds of options before settling on the ESOP option about 5 years ago. During the last 3 years, a group of 6 employees worked with me to determine the best form for our ESOP Plan, but this announcement would be the first notification to all of the employees. It was important to me that they would be supportive of the ESOP idea,” Kiely stated prior to his announcement.

I probably did not help Kiely’s apprehension when I told him that I had attended many of these ESOP announcement meetings and that employees simply could not be expected to be enthusiastic about their becoming employee owners via an ESOP upon first hearing about it. Their reactions would be more personal: How much will it cost me? Will I lose my job? Will I take a cut in pay? Will we lose our 401(k)? Who is going to run the company?

At the meeting of all employees on December 16, 2011, Kiely made some introductory comments and explained his thought process and the background leading up to his decision to eventually sell 100% of VMC to the employees through an ESOP and to start by selling 30% immediately with, most likely, two additional transactions being required to sell all of the company.

Kiely explained to the employees, “I did not want to sell to an outside firm. There is no predicting how they would treat you, the current employees. The ESOP concept is one that will allow me to retire and each one of you as an employee to become an owner of the company and to share in its success. I like that by my selling to an ESOP all employees will ultimately benefit.”

Next, I explained the ABCs of VMC’s ESOP and their ESOP transaction and answered questions as they arose.

Kiely made some concluding comments and stated that he hoped the employees understood his logic and goals and the basics of ESOPs and his desire to work with them to make the VMC and VMC’s ESOP a success.

He received a standing ovation. Our cover picture for this issue of OAW captures the moment.

Employees thanked Kiely for giving them the opportunity and stated that he needn’t worry, that they would succeed. Many hugs were exchanged.

Sandra Huntley, Service Coordinator, had a front row seat during the meeting and reacted excitedly. “This is the best thing I can imagine. John Kiely has been the best boss anyone could have. I’ve been at VMC for 13 years, and now I can’t see myself ever working for another company. With the ESOP, I have a chance to be an owner. I now feel my years with VMC are worth more than I ever hoped to accomplish.”

Kathie Crowley, Finance Manager and a member of the employee advisory group, reflected on the entire process. “When John first came to us with his vision of the future my reaction was one of relief, concern, and ultimately excitement. Relief that there was a plan, concern that the plan involved a business model (ESOP) that was completely foreign to all of us, and excitement that I, along with half a dozen of my co-workers, would play an active role in making John’s vision a reality. We could participate in the
decision-making process, help to formulate policy, and brainstorm about ways to create an ownership culture from the ground up. Being a member of the advisory board has been far more rewarding (and, at times, more challenging) than any of us could ever have anticipated. Leadership/Ownership is something you grow into. It’s comforting to me that we are all in this together.”

John Kiely will stay on as President. Stephanie Thober, Property Manager, appreciated the continuity, “We will have a smooth transition as the existing management team takes on more and more of John’s responsibility during the several year period of transition in which the ESOP pays off the loan for purchasing 30% of the shares and then purchases the remaining shares.”

The OEOC provided assistance to VMC throughout the process. “I sought help from the OEOC early-on,” explained Kiely, “and their involvement has been vitally important to the structure of our ESOP transaction, to financing the ESOP purchase, to determining the provisions of our ESOP Plan and to our successful roll-out of the ESOP.” [The Common Wealth Revolving Loan Fund, which is managed by the OEOC, provided a $250,000 loan to finance part of the initial purchase – see article on this page]

VMC’s employees’ reactions to John Kiely’s announcement did not originate solely from the meeting itself. Kiely had worked hard to establish a culture at VMC because he truly cared about the employees. The employees had years of experience working for him. They knew he cared, and they appreciated him. Their standing ovation was as much an expression of that appreciation as it was for the ESOP opportunity.

An ESOP is not a magic bullet and is not a guarantee of success, but the ESOP at Vistula Management Company is certainly off to a good start, and its future is likely a bright one.

- Bill McIntyre

Green City Growers Breaks Ground

On October 17, 2011, Green City Growers, a ten acre commercial greenhouse and the third venture for the Evergreen Cooperatives network, had its groundbreaking event at its new site on Kinsman Road in Cleveland, Ohio. The Evergreen Cooperatives include Evergreen Cooperative Laundry and Ohio Cooperative Solar. The celebration of the newest Evergreen business attracted many of the city’s dignitaries, with appearances by Mayor Frank Jackson, Cleveland Foundation CEO Ronald Richard, and others.

Mary Donnell, CEO of Green City Growers, has plans for the greenhouse to be completed in spring 2012 and to be operational in the summer 2012. Ultimately, it will produce 300,000 pounds of herbs each year as well as 3 million pounds of specialty lettuce. All produce will be grown hydroponically in nutrient rich water rather than soil. Like the other Evergreen businesses, Green City Growers will be organized as a worker cooperative, employing residents from the Cleveland community and giving employees an ownership stake in the business.

- Ashley Hernandez

Common Wealth Revolving Loan Fund Facilitates Vistula ESOP Transaction

The “Great Recession” had a strong negative impact on the general economy and also appeared to “delay” interest in pursuing transitions to employee ownership by both owners and employees due to a great deal of uncertainty in the economy. Economists are indicating that the economy is turning the corner, perhaps timidly, but turning the corner none the less. This appears to be enough to have caused several companies to pursue conversion to ESOPs in the past year. Correspondingly, there have been opportunities for the Common Wealth Revolving Loan Fund, the non-profit loan fund managed by the OEOC and specializing in financing for employee-owned companies, to assist with financing for ESOP and worker-owned cooperative transactions.

One of these companies that started such a conversion was Vistula Management Company in Toledo, Ohio. In December 2011, Vistula used internal resources and funding provided by the Common Wealth Loan Fund to facilitate its ESOP’s purchase of 30 percent of its shares owned by John Kiely, the President and selling owner. This 65 employee company manages over 1,600 low income housing units in the greater Toledo area. Kiely said that the transition was one that he had been pursuing over the past 10 years, and the loan from CWRLF was critical in getting the initial shares sold into the ESOP.

In addition to the Vistula loan, CWRLF has approved a loan to the Green City Growers Cooperative, a worker cooperative that will operate a 10 acre hydroponic greenhouse operation in Cleveland. We anticipate closing this loan and the greenhouse being operational in the second quarter of 2012. We are continuing to build the loan fund capacity by upgrading software systems and lending capabilities and by launching a new website. We look forward to providing more financing support to existing and perspective employee-owned companies.

For more information on CWRLF financing for your company, contact Roy Messing, Loan Fund Coordinator.

- Roy Messing

2012 Is International Year Of The Cooperative

With one of the worst recessions challenging the global economy, many people and organizations are ex-
Ohio Governor John Kasich’s JobsOhio Initiative Takes Shape

As a major part of Ohio Governor John Kasich’s economic development program to revitalize the State’s economy, JobsOhio was formed in early 2011 as a private, nonprofit corporation designed to lead Ohio’s job creation efforts by focusing on attracting and retaining jobs. In the process, JobsOhio is taking over many of the former duties of the Ohio Department of Development while the ODOD is being transitioned to become the Ohio Development Services Agency. The new ODSA will be left with three (3) divisions: Business Services; Community Services; and Operations.

In putting together a regional approach to the task, JobsOhio created the JobsOhio Network funded by roughly $15 million in Ohio Third Frontier funds. According to the JobsOhio website, the six (6) regional economic development organizations that comprise the Network “will assist in the attraction, expansion and retention of businesses for job and wealth creation http://jobs-ohio.com/ in the state, helping to promote each region’s assets.”

JobsOhio Network organizations include the following (along with contact information):

- The Appalachian Partnership for Economic Growth, located in Nelsonville, Greg Adams, $1.7 million, phone 740-753-3359
- Cincinnati USA Partnership, located in Cincinnati, $2.0 million, Jessica Johnson, phone 513-579-3100
- Columbus 2020, located in Columbus, $2.25 million, Matt McCollister and Patty Huddle, 614-225-6063
- Dayton Development Coalition, located in Dayton, $2.6 million, Marty Hohenberger, 937-222-4422
- Regional Growth Partnership, located in Toledo, $2.1 million, Gary Thompson, 419-252-2700 x313
- Team NEO, located in Cleveland, $4.1 million, Christine Nelson, 216-363-5400

According to the JobsOhio website, in 2011, JobsOhio worked with businesses of all sizes to secure 245 new investments, expansions and relocations, creating more than 21,000 new jobs and retaining nearly 62,000 existing ones.

JobsOhio is led by a board of directors that includes key leaders at some of the world’s top companies and educational institutions. Mark Kvanme was appointed by the Board and approved by the Governor as President and Interim Chief Investment Officer. For additional information, you may contact JobsOhio at 614-224-6446.

The OEOC, with its longstanding focus on keeping Ohio businesses and jobs through the promotion of business succession planning and employee ownership, stands ready to serve as a resource to any of the regional members of the JobsOhio Network and has already met with Team NEO and its partners in northeast Ohio. The OEOC can also be a resource for the ODSA’s Business Services Division which will have a strong interface with businesses and employees.

- Steve Clem

Ohio Employee Ownership News

Plorling viable alternatives. The United Nations is using 2012 to highlight one of these options—the cooperative business model. On December 18, 2009, the United Nations adopted resolution 64/136 declaring 2012 the International Year of Cooperatives (IYC). According to the official United Nations website, the main objectives of the resolution are increasing awareness of cooperatives, promoting cooperatives growth and establishing appropriate policies such as implementing regulatory frameworks favorable to cooperatives. In order to accomplish these objectives, the United Nations will invite member nations to form national committees to endorse and create awareness around IYC.

Here in the United States Senate, Resolution 87 passed unanimously and designated 2012 as the International Year of the Cooperative. The Resolution, introduced by Tim Johnson (D-SD) and Thad Cochran (R-MS) and 29 co-sponsors, encourages the formation of a national committee that will include government agencies and cooperative representatives. Additionally, the resolution champions the development of both new domestic and international policies.

For more information on the International Year of the Cooperative, please go to the United Nations website.

- Ashley Hernandez

CFED Ranks States for Economic Opportunity in Employee Ownership: Ohio Is 10th

Employee ownership is included in a newly issued scorecard from the nonprofit organization CFED. Since the mid-1980s, CFED has focused on “new enterprise development specifically in terms of the poor and unemployed with the goal of influencing local and state policy.” The scorecard provides basic information and ranks the states in five areas: financial assets and income, businesses and jobs, housing and home ownership, health care, and education. Information on employee ownership specifically can be found on the website.

Combining data from IRS Form 5500 Forms with their own research, the Washington nonprofit rated Ohio 10th in ESOPs and stock bonus plans per 1,000 firms. Perhaps surprisingly, the number one state is Iowa. And interestingly, six of the top 10 are in northern half of the Midwest, while just one (Virginia) is on the prosperous coasts. Hawaii’s appearance in the top 10 may be a real surprise for some, but it does have a very active Hawaii Chapter of the ESOP Association.

The data, originally compiled by the OEOC from IRS Form 5500 data submitted in and around the year 2009, listed 8,640 plans that reported some number of participants, even zero (typically when a firm is just establishing or closing out its ESOP). The total net assets of these plans, including the acquisition debts of recently established ESOPs, amounted to $836 billion dollars. The total liabilities of companies with debt was about $3 billion, less than 1% of the total net worth of all the companies.

As part of the research for CFED, OEOC contractor David Craig researched legal provisions helpful to employee ownership in the states. He found that most states exclude ESOPs from normal state scrutiny of investment funds, that 16 states authorized the use of Work Investment Act funds to support employee ownership studies or buyouts, although exactly what was authorized varied from state to state, and that 19 states have offered legal support for direct assistance to employee-owned firms such as financial analysis for employee buyouts, access to buyout loans, or support of an employee
Employee Ownership News

Developments in Washington in 2011 Affecting Employee Ownership

As everyone knows who reads a newspaper, listens to the radio or watches the evening news on TV these days, there is a lot of partisan controversy coming out of Washington on an almost daily basis. But one area where it seems that both political parties can agree is the subject of employee ownership. The issue of employee ownership has always received bipartisan support and that, fortunately, has not changed despite the current infighting in our Nation’s capital.

Over the last year, there have been several bills introduced in the Congress that could spur employee ownership of private companies. These proposals, none of which have yet become law, have enjoyed support from both sides of the aisle.

The first of the bills was introduced in March 2011 in the House of Representatives. H.R. 1244, The Promotion and Expansion of Private Employee Ownership Act of 2011, as its main feature, would extend to selling shareholders in S-Corporations the ability to rollover and defer tax on the sale, the so-called “1042 Rollover,” named after the section in the IRS Code. This proposed legislation would thus make available benefits for S corporations that have been available for C corporations for the last quarter of a century. As such, it would provide owners of S corporations with an attractive exit strategy as their retirement approaches should they want to sell the business to the employees. The bill, which now has 1042 Rollover to S corporation, both bills also direct the Secretary of the Treasury to establish the S Corporation Employee Ownership Assistance Office to foster increased employee ownership of S corporations.

While these two bills seek to encourage ESOPs, H.R. 3677, the National Cooperative Development Act, introduced in December 2011, seeks to create jobs and increase economic development in both urban and rural areas by providing resources and tools for cooperative development. To do this, the Act would establish a National Cooperative Development Center to provide capital, training and other resources to foster cooperative development.

Like the other legislative proposals made last year, it has been referred to Committee.

Not all of the action is taking place on Capitol Hill. In October 2010, the U.S. Department of Labor (DOL) proposed regulation requiring valuation advisors who recommend stock prices to ESOP trustees to be considered as ESOP fiduciaries. Currently, the valuation advisor is not a fiduciary, but simply makes a recommendation to the Trustee who sets the stock price and is the fiduciary.

In the Winter 2011 issue of OAW, we reported on the proposed regulation and OEOC Director Bill McIntyre wrote an Opinion Page outlining a number of reasons why the proposal was a bad idea and presenting some alternative solutions to what DOL indicated it was trying to accomplish (check out Bill’s article). The negative reaction from the ESOP community caused DOL to withdraw its proposal in September 2011, but DOL indicated they would issue a new version of the regulation revising the definition of ERISA fiduciaries in January 2012. The latest, as of February 2, 2012, from the US Department of Labor, is that when it re-proposes its regulation, it will be limited to appraisals that are used in “arms-length commercial transactions.”

The DOL’s stated intent to issue a new regulation brought about an effort in June 2011 by a group of U.S. senators, including important members from both sides of the aisle, to short-circuit the DOL’s action, and to propose a bill, S. 1232, to modify the definition of fiduciary under the Employee Retirement Income Security Act of 1974 to specifically “exclude” valuers and appraisers of ownership center. However, not all of the 19 have followed through with budgetary appropriations to support their own law.

- Jacquelyn Yates

ESOP & ERISA Advisory Services

- Assessment of strategic alternatives
- Feasibility analysis and preliminary valuation
- Assisting with transaction structuring and negotiation
- Fairness and solvency opinions
- Litigation support and expert testimony
- Annual valuations
- ESOP loan restructuring
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- ESOP termination

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Owners At Work Spring 2012 7
Employee Ownership News

USW, Mondragon, and OEOC Unveil Union-Cooperative Model Document

The United Steelworkers (USW), Mondragon USA, and the OEOC have unveiled their model for developing sustainable jobs using cooperatives. Titled “Sustainable Jobs, Sustainable Communities: The Union Co-op Model,” the document lays out basic principles, as well as essential components, of the model.

Written by the USW’s Rob Witherell, the OEOC’s Chris Cooper, and Mondragon USA’s Michael Peck, the model is the next step in a process that started with the partnership agreement between the USW and Mondragon first announced in 2009.

As part of the rollout of the model, the USW hosted a press conference on March 26th at their headquarters in Pittsburgh that included a contribution from OEOC Director Bill McIntyre among others.

Witherell noted that, “The people who originally formed and supported the Mondragon cooperatives did so out of necessity to provide for their families during tough economic times. Their values of self-reliance and ownership have deep roots in American culture and history as well, and form the basis for the initiative. We believe that our Union can play an important role in creating new jobs, developing better business models, and growing new industries.”

The OEOC’s Cooper added, “We look ahead to the role this model will have in furthering employee ownership as an example for economic development, wealth creation, and business and job retention.”

Moving forward, the document is serving as a beginning point for a number of business start-ups and restarts over the ensuing months. Keep an eye out on this space for future announcements.

- OEOC Staff

Employees Settle Lawsuit Against Tribune for $32 million

In the Summer 2007 issue of Owners at Work, the OEOC did an in-depth analysis of the Tribune Company ESOP that was engineered by billionaire Sam Zell, examined the pros and cons of the deal for both Zell and the employees and determined that the deal was risky, but potentially good for Zell and the ESOP. Unfortunately, risky won and potential lost.

The company filed for bankruptcy a year later.

In November of 2008, the participants and beneficiaries of the Tribune Company Employee Stock Ownership Plan filed a lawsuit challenging the leveraged ESOP buy-out of the company. The suit was based on the contention that the buy-out that created the ESOP violated ERISA because the ESOP had to pay more than fair market value for the stock and was required to buy unregistered shares even though the stock was still trading on the New York Stock Exchange.

In November 2010, a federal court in Chicago agreed with the employees and set the stage for a settlement valued at $32 million that was approved in October 2011 by the United States District Court for the Northern District of Illinois. According to news reports, some 13,000 current and former Tribune employees will divide the settlement which will go into their retirement accounts after legal fees of around $8 million are deducted. Insurers will foot most of the bill, contributing $26.5 million, while the Tribune will pay $4.5 million and GreatBanc Trust, the ESOP trustee, $1 million.

- Steve Clem

B Corp Update: Seven States Now Authorize Benefit Corporations

ESOPs would seem to be excellent candidates for becoming Benefit Corporations or certified B Corporations, a new type of purpose-driven corporation that creates benefit for all stakeholders, not just shareholders. Stakeholders can include employees, suppliers, customers, the community and the environment.

This is particularly relevant for an ESOP when it must deal with an outside offer to purchase the company. Rather than focusing solely on the return to ESOP participants as participants, a Benefit or certified B Corporation ESOP can consider the impact of the sale of the company on other constituents, too, especially the employees (who might lose their jobs) and the community (which might see a business shut down).

When we wrote about Benefit Corporations in our summer 2011 issue of OAW, only two states (Maryland and Virginia) had legally recognized Benefit Corporations. Since then five more states – California, Vermont, New Jersey, Hawaii and New York -- have passed legislation authorizing Benefit Corporations. In all states, the bills had strong bipartisan support. Legislation has also been introduced in Michigan, Pennsylvania, North Carolina and the District of Columbia.

In California, Patagonia, the well-known outdoor apparel company, became the first company in the state to elect Benefit Corporation status. As quoted at Corporate Social Responsibility Newswire, Patagonia founder Yvon Chouinard stated, “Patagonia is trying to build a company that could last 100 years. Benefit corporation legislation creates the legal framework to enable mission-driven companies like Patagonia to stay mission-driven through succession, capital raises, and even changes in ownership, by institutionalizing the values, culture, processes, and high standards put in place by founding entrepreneurs.”
Patagonia is not employee-owned (yet), but if you substitute “ESOP” for “mission-driven” in Chouinard’s statement, it would still be a very valid statement.

A Benefit Corporation is a legal status created by state statute. A certified B Corporation takes the concept a step further by requiring companies to reach a minimum score on an extensive questionnaire about their beneficial impact in several areas. Certified B Corporations are not required to be Benefit Corporations. A Certified B Corporations is not a creation of state statute but is a certification provided by B Lab, a nonprofit organization dedicated to using the power of business to solve social and environmental problems. There are now over 500 Certified B Corporations.

ESOP companies should strongly consider becoming either Benefit Corporations or Certified B Corporations.

The Occupy Wall Street people are not only protesting against the status quo. They are looking for something to support. A humble suggestion to the Occupy folks: support employee ownership through ESOPs and worker-owned cooperatives and support companies becoming Benefit Corporations and/or Certified B Corporations. Both are a better way of doing business. Both should be the way of doing business.

- Bill McIntyre

B Corporations That Are “Best For the World”

B Lab measures candidates for B Corporation certification for their impact in three different areas – the environment, the community, and the workers.

For the first time, B Lab recognized corporations in three different areas – the environment, the community, and the workers. Best For the Community, Best For the Planet, and Best For the World. Those areas as being “Best For the World” in Chouinard’s statement, it would still be a very valid statement.

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- Bill McIntyre

President Obama’s Tax Reform Proposal and S Corporation ESOPs

In late February, the Obama administration released its “Framework for Business Tax Reform.”

The framework proposes to alter S corporation tax rules so that large S corporations would be taxed as C corporations rather than as pass-through entities as they are at present. That could be potentially harmful to S Corp ESOPs, although ESOPs are not specifically mentioned, and large S corporations were not defined.

If S Corp ESOP companies were to be taxed as C corporations, it would seem that the ability to avoid corporate income taxes on the percentage of employee ownership held by the ESOP would no longer apply. That would remove much of the incentive to become an employee owned company.

However, since the vast majority of ESOP companies have fewer than 500 employees, they may not be affected by the definition of large S corporations. Only a relatively few number of large S corporation ESOPs may be impacted by the proposal, but a reduction in ESOP tax incentives could ultimately affect all ESOPs.

There is no current effort to move on the proposals in Congress. However, the ESOP Association has come out against the proposal. Said Association President Michael Keeling, “Our national leaders of both parties need to understand that national policies to encourage employee stock ownership, and new policies to increase ownership among more working Americans, need to be considered as an effective way to ensure our national employment rate is where we all want it to be.”

- Steve Clem
The Canadian Worker Co-operative Federation (“CWCF”) and other supporting organizations conducted a conference in Quebec City this past October focused on the transitioning of businesses owned by the aging “Baby Boomers” to employee ownership. This event was international in nature, with speakers from Canada, France, Italy, Argentina, and the United States. All of the participating countries are facing the potential repercussions of retiring owners not being able to successfully transition their companies to the next generation, and the resulting negative impact on the local economies.

The conference promoted and highlighted the potential to transition the business to employee ownership, especially in the form of worker cooperatives.

Different countries have taken a wide range of approaches to address this issue. The responses even vary with in each country. Quebec, the province that hosted the event, appears to be well out in the front in planning for this noted transition. Perhaps this is due to the culture that exists in Quebec, which appears more accepting of participatory forms of business ownership. There is strong support and organization of approaches to transition private businesses to worker cooperatives.

The CWCF and other support organizations are developing approaches to assist private business owners to successfully transition ownership to worker cooperatives. Desjardins, the largest Canadian Credit Union, has established a venture capital group that purchases the shares of companies, helps supply management consulting services, and transitions the companies to worker cooperatives.

The CWCF and other support organizations are developing approaches to assist private business owners to successfully transition ownership to worker cooperatives. Desjardins, the largest Canadian Credit Union, has established a venture capital group that purchases the shares of companies, helps supply management consulting services, and transitions the companies to worker cooperatives.

Quebec is also the home of some 2,700 cooperatives, including 394 worker cooperatives. All of Canada has 615 worker cooperatives, and the United States lags behind with an estimated 300 worker cooperatives. Canada has a limited number of ESOPs, as compared to the approximately 11,500 in the United States. However, Canadian ESOPs do not enjoy the same tax benefits as their counter-parts in the United States.

France has developed federal government loan guarantee programs to entice lenders to extend loans to worker cooperatives for purchasing businesses that would relocate out of the country if they were not sold to their employees.

Jose Orbaiceta, President of the Federation of Worker Co-ops in Argentina, outlined the more controversial approach in that country, where worker cooperatives re-opened manufacturing facilities after the country defaulted on its national debt and factories shut due to a credit crisis.

Italy’s Emilia Romagna area has about 20,000 worker cooperatives that developed as start-up operations but has not been very active in seeking the transition of private businesses to worker cooperatives.

Centers such as the OEC and Vermont Employee Ownership Center in the United States, and the CWCF in Canada (outside of Quebec) have been active in promoting worker cooperatives as a transition option for exiting private business owners, but these efforts pale in comparison to those in Quebec.

Roy Messing of the OEC outlined the state of readiness in the United States; highlighted expertise, resources and tools available to convert a business into a worker cooperative; and presented the “Select Machine Conversion Case” as an example of transitioning a business to a worker cooperative. The OEC was heavily involved in the Select Machine case.

Spinnaker Coating Becomes an ESOP

On February 1, 2012, the number of Ohio ESOPs increased by one, as Spinnaker Coating, a manufacturer of adhesive label materials based in Troy, Ohio, announced that it had become an S Corporation ESOP. According to the Company press release, prior investors sold 100% of their ownership interest to a newly created Employee Stock Ownership Trust, allowing current and future employees to gain a beneficial ownership interest in the Company without any personal investment.

The Company, which has its corporate office and two plants in Troy, has approximately 250 employee owners. Commenting on the conversion to an ESOP, Louis Guzzetti, Jr., Chairman and CEO, said “It represents a very tangible way to reward those who have played the critical role in Spinnaker’s success since we purchased the assets of our predecessor company out of bankruptcy in 2002.” Guzzetti, who will continue in his current position, also noted that “an ESOP is an excellent way in which to assure the continuation of our world-class Customer Service model, help retain valued employees, and enhance our Company’s productivity and profitability. We expect the ESOP to increase the retirement security of our Employee Owners, particularly if we continue on the growth path we have enjoyed the last several years.”

Dan Potts, a 27-year employee of the company, echoed those sentiments: “it gives you a little bit more pride to know you own the place...the more you contribute, the more you are going to get out of it. We always have it flowing, I think it will just flow that much better.”

Verit Advisors, a Chicago-based investment banking firm fluent in ESOPs, advised Spinnaker on the transaction.

OEC Staff

Obituary - Robert Oakeshott

Robert Oakeshott, champion of worker cooperatives and founder of England’s Employee Ownership Association, died July 7, 2011 at age 77. Robert was a great friend of employee ownership, a friend of OEC founder and long-time director, John Logue, and one of the first to bring the successes of the Mondragon Cooperatives to the attention of the world. He was a prolific writer about employee ownership and promoted it in the UK.

The Federation of Worker Cooperatives newsletter noted, “His life was devoted to pushing, in the most amiably persistent way, the notion that if workers became stakeholders, if the gap between management and labor vanished, and if effort and profit were shared for the common good, human beings would be happier, freer and, just possibly, better off.”

- OEC Staff
Obituary - Bruce G. Herman

Bruce Herman, a friend of the OEOC and employee ownership, indeed of workers everywhere, sadly passed away February 7, 2012, after a 6-month battle with pancreatic cancer. He leaves behind his wife and three young boys.

Bruce was a featured speaker at the OEOC’s 24th Annual Employee Ownership Conference in 2010. At the time, he was the Deputy Commissioner for Workforce Development in the New York State Department of Labor. Among the initiatives Bruce was working on in that capacity was the resurrection of an employee ownership program within the Department of Labor. New York used to have a state employee ownership program, but it folded some years ago, a casualty of political changes. Bruce was working to recreate the program, using the OEOC as a model. We were fortunate to have had the opportunity to work with Bruce on this project and see his dedication to employee ownership first hand.

Bruce was always committed to social and economic progress. Before joining the NY Department of Labor, Bruce was the Executive Director of the National Employment Law Project, working on developing policies to secure economic opportunities for workers. Before that, he was with the Center for Workforce and Economic Development and assisted in emergency efforts to find sustainable employment for thousands of workers dislocated as a result of the 9/11 terrorist attacks, an effort that most notably resulted in the establishment of a worker owned cooperative restaurant in New York City called COLORS.

Bruce had a labor background, coming out of the garment industry. Experiences there led to his becoming the first Executive Director of the AFL-CIO’s Working for America Institute in Washington, DC and to being named as President of the Garment Industry Development Corporation in New York City. He was the very first funder and was on the board of Restaurant Opportunities Centers United (ROC-United), whose mission is to improve wages and working conditions for the nation’s low-wage restaurant workforce. ROC-United is the only national restaurant workers’ organization in the United States. His extensive experience also included consulting on workforce development and labor relations on local, national and international levels.

Bruce’s contributions will be missed.

- OEOC Staff

Bruce Herman stands in front of the original worker-owned cooperative, the Rochdale Pioneers Toad Lane store in Rochdale, Greater Manchester, UK in 2011.
Across the nation, the numbers are growing. Thousands are marching in protest and in hope for a different way. The “99 percenters” are saying that Wall Street and other entities that Wall Street represents have left them in the dust.

Certainly it is hard to defend Wall Street and corporate America when the evidence seems to indicate that the rich are getting richer, the poor poorer and the middle class is in decline.

On the other hand, the intensity of the drama playing out on the streets often drowns out the voices of reason that say “we need business.” Business not only hires people, but it also provides the goods and services that are necessary for living. In addition, the owners of many businesses are good people who care for their employees, work hard to serve their customers and contribute to their communities. The protesters will hopefully, at some point, be employed by a business.

Still, many of us are disturbed by the practice of some who pay as little as possible in wages and benefits while maintaining an extravagant lifestyle themselves.

It is often stated that a business owner is the primary risk taker and therefore deserves his or her reward for courage and entrepreneurial spirit. But is the worker not equally important? Without them, the owner has no business. Without working people, there is no reward for the owner.

And, should the enterprise fail, the lives of all are put in jeopardy.

There is an alternative model that sustains businesses and provides for the needs of working people: employee ownership, or what some call shared capitalism. I am not suggesting that public or privately held companies are of no value. As stated earlier, many are honorable in their dealings with employees and customers. However, employee ownership needs to be considered as a valuable alternative by all those who are concerned about the state of business in America.

Employee-owned companies can be large or small. CH2M Hill in Englewood is a large international company that is [100% ESOP] owned, as is Namasté Solar, a small [worker-cooperative] solar-installation company in Boulder. …

There are many ways that employee-owned companies can be formed. Firms can be sold to their employees, with the owner receiving full appraised price for their company. The sale can be structured in such a way as to either delay or eliminate the capital gains tax, in addition to other possible tax advantages.

Employee-owned companies return the profits back to the employee-owners, and they grow two to eight times faster than privately owned enterprises. Employee-owned organizations are usually democratically run, and the profits are retained in the community. The business model is free enterprise and a form of capitalism.

Chambers of commerce should be promoting employee ownership as an option, and business schools could be offering courses in it. City and state economic development departments could be showing business owners how to sell to their employees should the need arise. And, finally, lawyers, CPA firms and banks that work with company owners need to be able to advise their clients on employee-ownership options and the accompanying tax advantages (and disadvantages).

Now is the time for advancing the employee-ownership option.
Suppose a group of 100 people were self-sustaining. If each person had $50,000, then the total community would have $5,000,000. As they conducted business amongst themselves, individuals might accumulate more or less than $50,000; however, the total wealth of the community would remain at $5,000,000.

Now suppose we have situation A where our little community produces a product that someone in another community wants to buy, and our community sells the product at a profit. The wealth of our community has now increased greater than $5,000,000. Because we produce things that people outside our community desire, we can increase the wealth of our community. This is good!

Now suppose we have situation B where our little community does not produce a product that is needed in the community and we have to buy the product from outside our community. Money flows out of our community, and the wealth of our community is now less than $5,000,000. Because we’re not producing things that we need, we use some of our existing wealth to purchase those goods, but, in doing so, we reduce the wealth of our community. This is NOT good!

Situation A is China; situation B is the United States.

And China has an opportunity for continued improvement because of the freedom of financial choice it has as a nation due to its generating a budget surplus while operating the country.

The US, in contrast, faces numerous challenges due to large deficits and the flight of manufacturing jobs overseas which constrain the available options for managing the country. Both the Bush and Obama administrations responded to the Great Recession by providing government funded stimuli to the economy. But, ultimately, once the stimulus projects stopped, too many Americans still did not have jobs, and that’s because we are no longer the manufacturing engine for the world.

Individual American companies, each behaving perfectly logically, chased cheaper labor to manufacture their products in China – because if they didn’t, their competitors would, and then they’d be unable to compete.

Individual American consumers, each one behaving perfectly logically, purchased lower price products because of the perception that they were of comparable quality – let their neighbors pay the higher prices. They themselves will be smart and save money and pay the lower price.

Unfortunately, when you add up all the individual company decisions and all the individual consumer decisions, all perfectly logical, you begin to realize that the US has a problem that could become a really huge problem.

Andy Grove, retired CEO of Intel, was profiled in the Stanford Graduate School of Business online magazine, and pointed out that individual companies pursuing their own agendas leads to offshoring manufacturing and even research and development to save money, but the result is a gradual loss of the expertise and knowledge needed to create and scale up manufacturing for the next great industries, such as batteries and solar panels for clean en-
Energy. “Without scaling, we don’t just lose jobs. We lose our hold on new technologies,” Grove contends. “Abandoning today’s ‘commodity’ manufacturing can lock you out of tomorrow’s emerging industry.”

Further, Grove warned in the same Stanford GSB magazine article, published prior to the whole Occupy Wall Street phenomenon, that “unless the country wakes up to the real challenge of creating jobs and starts to chip away at stubbornly high unemployment, it could face social unrest it has not seen in generations. The only hope is to restore a manufacturing base in the United States.”

Restoring the United States’ manufacturing base is beyond the scope of this article; however, stopping the outflow of manufacturing jobs is not. The US is facing a tsunami of baby boomer business owners who are approaching retirement age and who will need to transition their company to the next generation. The statistics on successful business transitions are dismal – only 15-35% of business transitions are successful, with the more recent studies yielding the lower percent.

Unsuccessful business transitions mean loss of jobs. Business owners who develop a succession plan increase their chances for a successful business transition. Economic development professionals recognize that the easiest job to sustain is one that is already here. It’s much harder to attract a new job than it is to maintain an old one.

However, there is no glamour in keeping existing jobs. There will be no headline: 40 Jobs Saved Due to Owner Having a Succession Plan.

We believe that the lack of succession planning is the #1 preventable cause of job loss in the U.S. What can be done to change that scenario?

State economic development officials and ESOP service providers can be part of the solution. First, business owner succession planning programs should be recognized as economic development programs.

Second, ESOP service providers should take every opportunity to educate other service providers – attorneys, bankers, accountants, insurance brokers, and financial planners – of the option for their business owner clients to sell their companies to their employees through an ESOP or worker-owned cooperative.

Hugh Reynolds of Crowe Horwath LLP stated years ago at an OEOC Advisory Board meeting that “service providers will not recommend for their clients an option that they do not have at least a basic understanding of themselves, and most service providers do not have a basic understanding of ESOPs.”

We at the OEOC have had a business owner succession planning program in Ohio for years, and, after hearing Reynolds’ advice, have developed programs to educate non-ESOP service providers about the basics of ESOPs, along with the recommendation that they refer to us any clients for whom an ESOP might be appropriate.

ESOPs are in the right place at the right time. We who live in the employee ownership world are aware that studies consistently show that employee owned companies that have an ownership culture consistently outperform non-employee owned companies by 2-3% in just about every performance indicator measured. They are more competitive and more successful. Employee owned companies are simply a better way of doing business.

So, let’s stop the drain of American jobs to China (and elsewhere).

As Dick Peterson of the Rocky Mountain Employee Ownership Center in Colorado recognizes in his article, let’s encourage all 50 states to fund business owner succession planning programs as economic development programs for their state.

Let’s educate those aging baby boomer business owners of the advantages of business owner succession planning and of the option of selling their business to their employees via an ESOP or worker-owned cooperative.

And then let’s help those new ESOP companies establish and maintain an ownership culture so they can achieve performance improvements.

Employee-owned companies tend not to send their jobs overseas. They keep their jobs here in the United States. Their companies are more competitive in the global marketplace. They create additional jobs. And those companies create real wealth for their employee owners.

Yes, indeed, ESOPs can be part of the answer to the China problem. Maybe they should be a large part.
Most companies offer 401(k) tax deferred savings plans for employees, and most of the companies that offer 401(k) plans offer a company match for a certain % of employees’ savings; e.g., the company will contribute ½% to an employee’s 401(k) for each 1% of pay deferred by the employee up to a maximum company contribution of 3%. The 401(k) is a qualified retirement plan. Employee Stock Ownership Plans (ESOPs) are also qualified retirement plans. Lately, we have noticed some misconceptions about the interaction of ESOPs and 401(k).

**MISCONCEPTION #1:** If my company establishes an ESOP, that means the company must discontinue the 401(k) plan.

That is false. A company can have both an ESOP and a 401(k) Plan.

**MISCONCEPTION #2:** If my company establishes an ESOP, that means the company must discontinue its company match within the 401(k) Plan.

That is false. There is no requirement that a company must discontinue its company match within the 401(k) if it establishes an ESOP. However, many companies make the discretionary decision that the ESOP will become the company’s primary retirement vehicle, so the company will be concentrating its retirement contributions in the ESOP and, therefore, will be discontinuing or reducing the company match within the 401(k). An additional factor is that when the company is paying off the loan used to purchased shares by the ESOP, this greatly constricts cash flow. After the loan is repaid, many companies re-start the match into the 401(k) Plan, although it is often at a lower amount, since ESOP contributions are still needed for repurchase obligation funding. Finally, in cases where the company revises its 401(k) Plan so that the company match is eliminated, typically the company has the discretion to put in a company match for a given year if the company’s financial condition allows it to do so.

**MISCONCEPTION #3:** My company has both an ESOP and a 401(k) Plan, but they are separate plans and have no interrelationship with one another.

That is false. There is a requirement that the combined company contribution for all retirement plans to employees’ retirement accounts cannot generally exceed 25% of eligible payroll. Company contributions to both the ESOP and 401(k) Plans are taken into account in determining whether or not a company complies with this requirement. Additionally, the law limits the amount of 401(k) deferrals, company contributions, and reallocated forfeitures any individual participant can receive under all of the retirement plans an employer sponsors, and the 401(k) and ESOP are tested together for this limit.

**MISCONCEPTION #4:** My company has a K-SOP in which one of my investment choices for my payroll deferral is to buy company stock in the ESOP. The ESOP’s vesting schedule is the 6-year graded schedule. I’ve been with the company only 3 years. I’m irritated that I’m not 100% vested in shares that I am purchasing with my own money.

Don’t be irritated. While this comment cannot be stated with certainty, your ESOP Plan should state that ESOP participants who purchase ESOP shares through the K-SOP are 100% vested immediately in those shares.

**MISCONCEPTION #5:** Extending #4 above, my ESOP Plan does say that ESOP participants who purchase ESOP shares through the K-SOP are 100% vested immediately in those shares. That means I’m 100% vested immediately in the company match in my 401(k) which is in the form of ESOP shares of stock.

No. In most cases, since the shares in your 401(k) company match were provided by the company and were NOT directly purchased by you, the ESOP’s normal vesting schedule applies to those shares. You are not 100% vested immediately in ESOP shares in your 401(k) company match.

This article was reviewed by Pete Shuler, Partner in the Columbus OH office of the CPA and ESOP administration firm of Crowe Horwath LLP. However, nothing in this article should be construed to be legal or tax advice or opinion. For answers to specific questions, consult your ESOP professional.
Your Partner
In the ESOP Life Cycle

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Select Machine Becomes 100% Worker-Owned Cooperative

Select Machine Inc. of Brimfield OH became a 100% worker-owned cooperative with the purchase of the final 33% of the shares owned by Doug Beavers and Bill Sagaser. The purchase completes a process begun in September 2005 when the employees purchased 40% of the company stock in a precedent-setting “1042 rollover-eligible” transaction. Select Machine was the first-ever case in which the selling owners had the ability to take advantage of the “1042 rollover” provision and defer capital gains taxes on their sale of stock to the 8 employees through a worker-owned cooperative.

[Editor’s Note: See the Winter 2005/2006 and Winter 2002/2003 issues in our online Library.]

After several smaller purchases of shares, the co-op members purchased the remaining shares this past year. All has not been peaches and cream for the co-op members. The Great Recession hit the company, a machine tool supplier of the construction and demolition industries primarily, hard. Total employment dropped by 70%. It is now back at almost its original level, with the newer employees being in their qualification period for co-op membership.

John Tomasek, President, remarked, “I don’t think we would have survived the downturn if we were not employee-owned. We worked cooperatively with rolling layoffs to share the sacrifice and pain.”

Added Todd Brewster, Office and Administrations Manager, “Many of our competitors did not survive. We’re now much stronger – competitively, financially and as a group working together to make our company successful.”

David Baird, Vice President, noted, “Our business has come back, but it’s changed. We’re very busy, but we typically have only a one month horizon for new orders. Before the recession, it was normal for us to have a 6-12 month backlog of orders. We’ve hired additional people, but we’re still all working long hours. As owners, we accept the long hours much more willingly than if we were just employees working for someone else. We all want to satisfy our customers.”

The OEOC helped extensively with the original transaction and has stayed in touch with the company ever since. The Common Wealth Revolving Loan Fund managed by Roy Messing of the OEOC has made two loans to the company. “We would not be a worker-owned cooperative today without the OEOC,” said Baird. “We appreciate their assistance.”

The OEOC can only facilitate a transaction or a company’s culture. Ultimately, it is the people at the company that make the company successful. The worker-owner cooperative members of Select Machine can be proud of their accomplishments and can thank their hard (and smart) work for putting them in a position to benefit long into the future.

- Bill McIntyre

YSI Inc. Acquired by ITT

ITT Corporation announced in September 2011 that it completed its acquisition of YSI Incorporated, a well-known ESOP company in Yellow Springs, Ohio. The result will be the formation of a water-focused analytics business with anticipated annual sales approaching $300 million. YSI has been an industry leading manufacturer of sensors, instruments, software, and data collection products for environmental water monitoring, with facilities in the U.S., Europe and Asia.

The acquisition of YSI was an obvious fit for ITT’s Fluid and Motion Control offerings and Xylem, the new standalone water company. YSI’s particular expertise in field and outdoor environmental applications and analytical instruments will strengthen the ITT Analytics business area. This segment of ITT is a leading manufacturer of premium field, portable, laboratory and online analytical instruments used in water and wastewater, environmental, medical, and food/beverage applications.

YSI, founded in 1948, was known as Yellow Springs Instruments when Hardy Trolander, Dave Case and other engineers developed mechanical timers and sensors for researchers at Wright Air Field. It has a long history of innovation and reported 2010 total revenues of $101 million. Its ESOP Trust was established in 1983 and was the largest single stockholding entity, owning about 27 percent of the company’s total shares. YSI employs about 390 at 22 sites worldwide with more than 170 employees at its Yellow Springs headquarters.

YSI had announced earlier in 2011 that it was looking for a buyer because a number of its investors desired to cash out. Reportedly, YSI executives were looking to find a single buyer that would purchase the entire company, continue to invest in its growth and keep operations in its current locations. The company had a diverse ownership structure including individuals, former employees, universities (Ohio University and Antioch College), long-time investors, and the ESOP. A Janney Montgomery Scott LLC financial advisor’s analysis of the deal gave YSI an “implied present enterprise value” of approximately $215-$291 million. However, according to ITT figures, the actual purchase price was apparently closer to $310 million.

Late in 2011 it was announced that former president and CEO Rick Omlor had been replaced by Ron Geis who was named general manager at YSI. Omlor will remain with the company as YSI’s executive advisor.
In 1990, YSI created the YSI Foundation, demonstrating a commitment to its core values and good corporate citizenship. Through the years, YSI focused on two markets: environmental, which accounted for 90 percent of sales, and life sciences. Sensors and software to test water quality and velocity of natural resources such as rivers, oceans, surface and groundwater are products of the environmental division. The life science division markets instruments that measure things like glucose for clinical and industrial markets.

ITT Corporation, headquartered in White Plains, N.Y., is a high-technology manufacturing company that operates around the world. It excels in three markets: water and fluids management, global defense and security, and motion and flow control. The company generated 2010 revenue of $11 billion and has 40,000 employees.

PT Services Becomes an ESOP

In 2012, P.T. Services Rehabilitation, Inc. will celebrate its 40th anniversary. What began in 1972 with a small group of physical therapists has grown into a company with over 250 employees and numerous locations in Ohio, Michigan and Iowa. P.T. Services is a leading provider of physical therapy, occupational therapy, speech pathology, and athletic training services. On August 1, 2011, P.T. Services became an ESOP corporation, with employees having 100% ownership of the company.

Establishing the ESOP was an integral part of a succession plan by two prior owners of the company. “Our employees are our most valuable resource,” said Mark Somodi, Ph.D., FACHE, Executive Director and Administrator of P.T. Services. “Their clinical skills meet or even exceed patient and physician expectation.” The company is headquartered in Tiffin, Ohio.

“P.T. Services Rehabilitation, Inc. has transformed over the past 40 years with changes and regulations that have occurred in the healthcare industry,” Somodi said.

As it has grown, P.T. Services Rehabilitation, Inc., has endeavored to remain patient-focused and committed to excellence in healthcare. The company now provides physical therapy, occupational therapy, speech-language pathology, and athletic training services.

“Many programs focus on community need, from pediatric to geriatric care and all possible rehabilitation services in between,” said Somodi.

As P.T. Services looks beyond 40 years, Somodi said, “our company will continue to grow and further our clinical capabilities to meet the needs of the communities we serve.”

- Jay Simecek

Are you getting every advantage for your ESOP?

When considering an ESOP transaction, are you sure you’re getting the maximum tax and strategic benefits from the deal? We’ve saved our clients hundreds of thousands of tax dollars by carefully planning of every aspect of the transaction. If you’re ready to start ESOP planning, add Davin Gustafson and our ESOP experts to your planning team.

We look closer.
Is There an Ideal ESOP Plan?

Bill McIntyre

Virtually every ESOP service provider begins an answer to every ESOP question with the phrase, “It depends.” What they mean is that their answer depends upon the specifics of the situation. Regardless of the specifics, we know that employee ownership combined with an ownership culture results in improved corporate performance. We also know that ESOP Plan provisions can either facilitate the development of an ownership culture or be obstructive to its creation. Relatedly, we know that certain ESOP Plan provisions provide incentives for ESOP participants to behave in ways that could cause financial distress for companies.

The ideal ESOP Plan should provide an incentive for all ESOP Plan participants at all times to work for the long-term success of the company.

By looking at the behavioral implications of ESOP Plan provisions, we can arrive at an ideal ESOP Plan. “Yes, Virginia, there is an ideal ESOP Plan.”

Let’s look at the basic ESOP Plan provisions in the sequence in which they would be encountered by an ESOP Plan participant and determine the ideal Plan provisions (ideal provisions are in italics).

1-ESOP ELIGIBILITY:
*Age = 21, but with credit for years of service prior to age 21*
*Time of Service = 12 months of continuous service*
*Hours Worked = 1,000 hours during the 12 months*

These are the typical maximums allowed by Law, and they are the most common choice of ESOP companies. Choosing an age less than 21 might be appropriate; however, given the reality of typical rapid turnover of 16-20 year-old employees, it’s worth avoiding the administrative expense by not making employees eligible for the ESOP until they reach age 21. For those teenagers that do stay, they are rewarded by having those years worked count as years of service for ESOP vesting purposes. Having a months-of-service and hours-worked requirement will avoid administrative costs for short-term employees as they will never enter the ESOP and fulfilling those requirements will be a badge of honor for those employees who are then eligible for the ESOP. Making it too easy to be eligible reduces the impact of the accomplishment of becoming eligible.

2-ENTRY DATE:
Immediately after fulfilling eligibility requirements.

This avoids the largest problem with new hires’ perceptions of the ESOP. They believe that when they are “eligible” to be in the ESOP, they are “in” the ESOP; however, the reality is that they do not enter until the next Entry Date after they have become eligible. If the next Entry Date is Jan 1 and the Plan Year ends on Dec 31, then, even though the new employee might have become eligible at any time Jul-Dec, they will not receive an allocation of ESOP shares on Dec 31 because they would not technically “enter” the ESOP until Jan 1. This is a huge negative surprise for new Participants.

Having the Entry Date be the same date as the date the person becomes eligible for the ESOP avoids this problem entirely and allows employees who are “eligible” for the ESOP to truly be “in” the ESOP, too.

3-CALCULATION OF COMPENSATION FOR FIRST YEAR:
All compensation during the year as reported on the W-2 are included in the allocation formula. Although not reported as W-2 income, Compensation would include 401(k) deferrals or 125 Plan (aka Cafeteria Plans or Flexible Spending Account plans) contributions.

The philosophy expressed is: Participants are eligible for the Plan Year and contributed during the entire Plan Year; therefore, we’ll count all compensation earned during the year – rather than, the Participant was eligible as of Aug 15; therefore, we’ll count only compensation earned after Aug 15. If this philosophy was not adopted and only compensation earned after the Eligibility Date was used in the allocation formula, this would result in new Participants having only a small allocation in their first year, perhaps an embarrassingly small allocation, thereby possibly causing them to be quite negative and cynical about the worth of ESOP. That is not a desired result. This choice makes sure that the eligibility and entry into the ESOP will be a pleasant experience for new Participants.

4-VESTING:
Graded 6-Year Schedule (i.e., 0%-20%-40%-60%-80%-100%)

The typical choice is between the 6-year graded schedule and a 3-year cliff (0%-0%-100%) schedule. The 6-year graded schedule still requires 2 years of service before a person begins to be vested; thus, people who stay only a short time still do not enter the ESOP and do not become a hassle to track administratively because they never become vested in their ESOP account. Plus, the graded schedule offers an incentive for a person to stay another year because, not only will they receive another allocation, but also they will become an additional 20% vested in their ESOP account. The cliff schedule only offers that incentive in 1 year (year 3) and has been known to offer the perverse incentive for people to leave the company after year 3 because “their ship has come in.” Finally, employees who have worked 6 years at the company are generally going to stay at the company, and that is the desire – keep the good employees at the company.

4A-PLAN YEAR:
The company’s fiscal year and the ESOP Plan Year will be the same.

Administration of the ESOP is vastly simplified if the company’s fiscal year and the ESOP Plan Year are the same.
4B-YEAR OF SERVICE:
A Plan Year in which an employee works 1,000 hours counts as a Year of Service.

This is very much the norm for ESOP companies and is consistent with the eligibility requirement of working 1,000 hours before becoming eligible.

4C-CREDIT FOR SERVICE PRIOR TO THE ESOP:
Unless the employees paid out of their own pockets to purchase ESOP shares from a selling owner (e.g., using their 401(k) funds) or an existing plan is converted into an ESOP, for vesting purposes, no credit will be given for service prior to the establishment of the ESOP.

The ESOP is new, and everyone starts off on the same basis re vesting. Years of service to the company are taken into account in the Allocation Formula [see 5B].

4D-VESTING & RETIREMENT
An ESOP Participant reaching the Retirement Age for the ESOP is automatically 100% vested, even if the Years of Service requirement is not achieved.

The ESOP is fundamentally a retirement plan, so allowing a Participant who works until Retirement Age to become 100% vested is consistent with the intent of the Plan. This is also required by Law.

4E-VESTING & DEATH & DISABILITY:
An ESOP Participant who dies or becomes disabled is automatically 100% vested, even if the Years of Service requirement was not achieved.

Although not required by law, vesting on disability or death is pretty much a universal ESOP design feature.

5-ACCUMULATION OF SHARES
5A-RELEASE OF SHARES AS ESOP NOTE IS PAID OFF:
Principal + Interest formula [i.e., the % of shares held in the ESOP Suspense Account that are released each year is the same as the % of remaining Principal + Interest paid during the Year on the ESOP Note]

The other allowed method is “Principal Only,” which can result in strange allocations if the loan structure involves a balloon payment. The safer bet is to go with the “Principal + Interest” method. Further, the law permits “Principal Only” only if the term of the ESOP Note is for 10 years or less.

5B-ALLOCATION INTO INDIVIDUAL ESOP ACCOUNTS OF SHARES RELEASED:
Eligible ESOP Participants would receive an allocation of shares released and of company cash or stock contributions into the ESOP based on a formula weighted as follows:
- 50% - W-2 compensation with no deductions for 401(k) deferrals or 125 Plan deferrals
- 50% - Years of Service including years of service prior to the establishment of the ESOP

By far, the most common Allocation Formula among ESOP companies is W-2 compensation, and the W-2 allocation formula is a “safe harbor” formula and would allow the company to avoid certain ESOP discrimination tests, thereby saving the company $500-1,000 in ESOP administration fees per year. Nevertheless, there is growing interest in other factors being included in the Allocation Formula:

1) Compensation is included in the formula because, while imperfect, compensation is probably the best single indicator of an individual participant’s ability to influence the performance of the company. Highly paid new employees are thus incentivized.

2) Years of Service are included in the Allocation Formula because the company should want to reward loyalty to the company. All participants are incentivized to stay employed at the company year after year.

Please note - using multiple factors in the formula may require specialized non-discrimination testing because this would not be a “safe harbor” formula.

5C-ELIGIBILITY FOR INCLUSION IN ALLOCATION FORMULA – GENERAL RULE:
ESOP Participants who have worked at least 1,000 hours during the Plan Year and who are employed as of the close of business on the last day of the Plan Year are eligible to receive an allocation.

The incentive here is simple. If participants want to receive an allocation, they should stay as employees.

5D-ELIGIBILITY FOR INCLUSION IN ALLOCATION FORMULA – EXCEPTION FOR DEATH, DISABILITY & RETIREMENT
ESOP Participants who die, become disabled or retire during a Plan Year will receive an allocation for that Plan Year.

This approach is fair for deceased or disabled participants, who probably would have satisfied the requirements if they had not died or become disabled. It is also fair for retirees. It enables a retiree to retire without penalty on any day of the year, a fact that would be appreciated by retirees. Retirees receiving a nice ESOP benefit can be the best salespersons to current ESOP participants. Companies do not want ESOP retirees to be complaining about how they received no benefit from their hours worked during their last Plan Year. This avoids that possibility.

6-FORFEITURES:
Forfeitures of the unvested portion of ESOP Participants’ individual ESOP accounts would occur:
For participants with 0% vesting = Immediately
For participants with 20-80% vesting = after completion of 5 consecutive years of break-in-service.

Ex-employee ESOP Participants have the right to step back into their ESOP account if they are re-employed by the company before they have completed 5 consecutive years of break-in-service. [A year of break-in-service is a year in which the person works less than 500 hours.]

A zero percent vested ex-employee ESOP Participant can be forfeited immediately as that is considered to be a “distribution” of the Participant’s account; thus, they have no account to step back into – it’s already been distributed.

However, a partially vested ex-employee ESOP Participant does have an account to step back into if they are re-
employed before incurring the 5 years of break-in-service. If that Participant’s shares have already been forfeited and allocated to other eligible Participants, the company may have difficulty finding shares to put back into the re-employed Participant’s ESOP account. That is an unnecessary hassle that can be completely avoided if the forfeiture for partially vested Participants does not occur until they've completed 5 consecutive years of break-in-service. This assumes, however, the participant does not receive a distribution of their vested benefit.

**6A-ALLOCATION OF FORFEITURES:**

*Shares that are forfeited are allocated based 50% on W-2 compensation and 50% on Years of Service.*

The typical treatment of forfeitures is to have them reallocated in the same manner as contributions are allocated. This greatly simplifies administration and non-discrimination testing.

**7-COMMENCEMENT OF ESOP BENEFIT DISTRIBUTION**

**7A-COMMENCEMENT OF BENEFIT DISTRIBUTION FOR “OTHER TERMINATION” (i.e. NOT Death, Disability or Retirement):**

*After the completion of 5 consecutive years of break-in-service (i.e., a 6-Year Wait)*

There are four primary justifications for having ESOP Participants who leave for “Other Termination” reasons wait until they begin to receive their ESOP benefit distribution:

1) An immediate commencement of payout of their ESOP benefit distribution may provide ESOP participants with an incentive to leave the company simply so that they can receive their ESOP benefit distribution. That is not a desirable outcome. ESOP companies want to retain good employees, not provide them with an incentive to leave.

2) An immediate commencement of payout of their ESOP benefit distribution may provide ESOP participants with an incentive to leave the company if the company is having a bad year, which should result in the ESOP stock price declining from last year’s higher price. Participants are thus incentivized to leave and be paid at last year’s higher price. If the company is having a bad year, chances are it is not doing well financially, either. So, in this case, an immediate commencement of payout provides an incentive for participants to leave and begin to collect their ESOP benefit precisely when the company is least able to make those payments. That is not a desirable outcome.

3) Not having the ability to leave and collect cash immediately, but having to wait 6 years before receiving a payout, employees will be motivated to make the company successful for the long term, or else they will not receive their ESOP benefit.

4) An immediate commencement of payout of Participants’ ESOP benefit distribution makes those immediate payments unpredictable and, therefore, unmanageable and will likely cause the company a financial crisis at some point due to the payout requirements at that point exceeding the company’s ability to pay. That is not a desirable outcome. No ESOP company should have an ESOP Plan provision that puts the survivability of the company at risk.

5) If ESOP Participants complain about having to wait 6 years before they begin to receive their ESOP benefit distribution, they can be informed that if they want their ESOP benefit distribution to begin sooner, then they should stay employed at the company until they reach Retirement Age, and that is exactly the proper incentive for employees. They should be incentivized to stay until they reach Retirement Age. The company does not want good employees to leave!

**7B-COMMENCEMENT OF BENEFIT DISTRIBUTION FOR DEATH, DISABILITY OR RETIREMENT (“DDR”):**

*Prior to the end of the Plan Year following the Plan Year during which DDR occurred; i.e., if someone retires in 2012, they’ll begin to be paid their ESOP benefit distribution before the end of 2013. This is required by Law.*

**7B-1-RETIREMENT AGE**

*Retirement Age = 62.*

That does not mean that a person must retire when they reach age 62. It simply means that if they leave the company before they reach age 62, they are paid their ESOP benefit distribution per the “Other Termination” rules and that if they leave after they reach age 62, they are paid their ESOP benefit distribution per the Retirement rules.

62 is younger than the current normal retirement age of 65-67 (depending on date of birth) as prescribed by the government for Social Security benefit purposes. Having a younger than “normal” retirement age sends a message that an ESOP participant is free to choose to retire younger than the normal retirement age and retire under Retirement rules. This is treating the company’s retirees well – treating them as adults with freedom to choose. It’s a provision that will be appreciated by ESOP participants. It also correlates with the Age 55 Diversification provision that ends at age 61 for participants who begin the election at age 55. It does mean participants are 100% vested at age 62 regardless of service.
7C-OFFERING OF CONSENT TO DISTRIBUTION:
Require participant’s consent for ESOP benefit distributions ≥ $1,000

The government requires consent for all ESOP benefit distributions from ESOP accounts with balances ≥ $5,000 but a separate government regulation requires the automatic rollover to an IRA of balances of $1,000-$5,000 for ESOP Participants who are eligible to receive their ESOP benefit distribution but who have provided no instructions to the ESOP as to how to make the payment to them. In most cases for which this applies, it is because neither the company nor the ESOP can locate the ESOP participant. Because banks (and other financial institutions) will likely be extremely reluctant to open an IRA account for a person whom they have never met and for whom they have no contact information, to avoid the hassle of trying to find a financial institution that is willing to open such an IRA, most companies avoid the problem by requiring consent for all ESOP benefit distributions ≥ $1,000. This is the prudent approach.

7C-1-FREQUENCY OF ASKING FOR CONSENT:
Every year until participants say “yes” & consent to commence the ESOP benefit distribution.

Note that once they say “yes” the die is cast. They have consented to all distributions in an installment distribution. They will NOT be asked to consent separately to each distribution in an installment distribution. Once they say “yes” they are not asked again.

Some Plans offer “consent” to an ESOP Participant when they are first eligible to receive their ESOP benefit distribution but then do not ask again until the Participant reaches Retirement Age per the ESOP Plan. For example, let’s say ABC Company is such a company and that Harvey started with ABC Company at age 22 and quits at age 37 after 15 years of service. At age 43, after the 6-year wait, Harvey is eligible to begin receiving his ESOP benefit distribution. If Harvey says “no”, then ABC Company would not allow him to begin receiving his ESOP benefit distribution until reaching age 65, the Retirement Age for ABC’s ESOP. That is a wait of 23 years. In all likelihood, once that is explained to Harvey, he will change his mind and elect to begin receiving the ESOP benefit distribution. In effect, such a policy takes away the usefulness of the “consent” option. Harvey is pretty much forced to consent. Harvey will not be happy and will likely voice his displeasure to other participants. This is not a desirable outcome.

An ESOP company should allow the consent option to be a real option for ESOP Participants; thus, the choice of allowing Participants to be offered the consent option every year until they say “yes.”

8-FORM OF BENEFIT DISTRIBUTION

8A-INSTALLMENT DISTRIBUTION:
Up to a 5-Year Installment Distribution (may be up to 5 years longer, max of 10 years total, for accounts ≥ $985,000 with 1 additional year being allowed for each $195,000 above the limit – both the $985,000 and $195,000 are adjusted annually for inflation) with lower dollar amounts being paid in less than 5 years; for example, for ESOP Account balances:
- $0-25,000 – lump sum payout
- $25,001-50,000 – 2 payments, 1 immediate & 1 after 1 year
- $50,001-75,000 – 3 payments, 1 immediate & 2 more after years 1 & 2
- $75,001-100,000 – 4 payments, 1 immediate & 3 more after years 1, 2 & 3
- $100,001-125,000 – 5 payments, 1 immediate & 4 more after years 1-4

>$125,000 – 6 payments, 1 immediate & 5 more after years 1-5

This methodology has numerous advantages:
1) Shorter distributions for small payouts gets smaller accounts off the books sooner.
2) Longer distributions for larger payouts minimizes the impact on a given year of a large balance payout.
3) Payouts at the end of years 1-5 are predictable and, therefore, easily incorporated into the company’s comprehensive financial plan.
4) Provides an incentive for all employees to work for the long-term success of the company because, if the company is not successful, then their ESOP benefit distribution will be smaller.

8B-DDR DISTRIBUTION:
Distribution must be completed within 5 years of the date of DDR.

This is required by Law, unless the participant elects otherwise.

8C-STOCK PRICE USED IN CALCULATING VALUE OF SHARES:
Each year’s payment is paid at the then current stock price per share; i.e., the stock price varies from year to year.

This methodology both provides an incentive for all employees to work for the long-term success of the company so that they will benefit from higher stock prices and also removes the element of “luck” from determining the size of an ESOP benefit distribution. ESOP Participants receiving a single lump sum payout may be hurt unfairly if they happen to be paid after a down year for the company and a corresponding high stock price. Installment payouts involving 6 payouts mean that participants are much more likely to receive a mix of payouts from good years, bad years and everything in between. That is perceived as a much fairer method versus a single payment in an amount determined only by the “luck of the draw”.

8D-OPTION FOR PARTICIPANT TO CONVERT ESOP ACCOUNT TO CASH DURING THE WAIT PERIOD:
No.

See the explanation of the rationale for 7A-1 above. It applies here, too.
8E-RECYCLING vs. REDEMPTION OF SHARES:
Recycling is preferred; i.e., ESOP benefit distributions will be paid by the ESOP (not by the company), and the shares will be reallocated amongst eligible ESOP participants.

With recycling, new eligible ESOP Participants will receive an allocation of shares repurchased. That would not happen with redemption unless the shares were re-contributed to the ESOP. There is no guarantee that shares would be re-contributed. Also, recycling is easier to understand. Here is an explanation of the mechanics of recycling vs. redemption.

RECYCLING:
1) The company contributes cash to the ESOP to cover the required payment of the ESOP benefit distribution to the departed ESOP Participants.
2) The cash contribution is allocated to all eligible ESOP Participants based on the formula in 5B above.
3) Newly eligible Participants share in the allocation of the cash contribution.
4) Remaining Participants use the cash to pay the departed ESOP Participants their ESOP benefit distribution in return for shares from the departed ESOP Participants. So, newly eligible ESOP Participants receive some shares of stock.

REDEMPTION:
1) The ESOP distributes the departed ESOP Participants their ESOP benefit distribution in the form of shares of stock.
2) The departed ESOP Participants are required to immediately sell their shares of stock to the company.
3) The company pays the departed ESOP Participants the value of their shares of stock. This payment is in cash.
4) The company retires the shares of stock that were redeemed.
5) At this point, newly eligible ESOP Participants receive nothing – no cash (because there was no ESOP contribution) and no shares (because the shares were retired). Also at this point, existing old ESOP Participants see an increase in the value of their shares because there are now fewer shares outstanding. Many companies practicing redemption stop at this point.
6) If steps 1-5 are continued over a period of years, a “have” and “have-not” situation develops whereby old Participants are thrilled because the value of their shares keep going up and new Participants see no value in the ESOP because they’ve been in the ESOP for several years and never receive an allocation of anything.
7) To avoid the “have” and “have-not” situation, the company re-contributes to the ESOP the shares repurchased from departed ESOP Participants. Sometimes this is done on an equal basis with shares repurchased and sometimes it is done on a percent of payroll basis.
8) The re-contribution of ESOP shares is allocated based on the formula in 5B above.
9) Newly eligible Participants share in the allocation of the share re-contribution … and the “have” and “have-not” situation is avoided.

8F-TYPE OF DISTRIBUTION:
Cash. [Participant is NOT allowed to receive their ESOP benefit distribution in the form of shares. This requires a statement in the corporate bylaws.]

Ultimately, the objective for most ESOP companies is to become a 100% ESOP-owned company that then elects S Corporation status and becomes exempt from paying Federal and State income tax. [Ohio has no State corporate income tax at the moment – it has a Commercial Activity Tax (CAT) instead – so the exemption from State income tax is of no benefit.] If shares are allowed to go outside the ESOP, then it becomes difficult to become a 100% ESOP-owned S Corp. The bylaw restriction disallowing ownership of shares by anyone other than the selling owners or their beneficiaries or the ESOP facilitates companies becoming 100% ESOP-owned S Corps.

9-AGE 55 DIVERSIFICATION – FORM OF DIVERSIFICATION:
Age 55 Diversification applies to those ESOP Participants who have achieved at least 10 years of active participation in the ESOP (i.e., 10 years of service) and have reached age 55 and allows them to elect in the Plan Year after the Year in which they qualify:
Years 1-5: 25% diversification of their ESOP stock
Year 6: 50% diversification of their ESOP stock
Years 7+: election disappears

The Age 55 Diversification is required by Law; however, the company has options as to how it allows Participants to implement the diversification. The ideal choice:
For eligible ESOP Participants electing Age 55 Diversification, the following alternatives in implementing the diversification are available for selection by the Participant:
– Rollover into participant’s 401(k)
– Paid as Cash to participant
– Direct Rollover to participant’s IRA

The primary other option available here is to make it mandatory that Participants electing the Age 55 Diversification roll over the amount diversified into their 401(k). That option represents the paternalistic philosophy that the ESOP is a retirement plan and the company is going to make sure that Participants keep the ESOP funds in a retirement plan, the company’s 401(k).

This is not ideal because of the basic belief that the ESOP benefit distribution belongs to the Participants and not to the company and that, therefore, the Participants should have a choice as to where the amount diversified (an ESOP benefit distribution) is paid.

SUMMARY:
Each of these ESOP Plan provisions provide an incentive for all employees (old & young, long-term & new, top management & middle management & line supervision &
hourly employees, highly paid & lower paid) at all times (good times & bad times) to work as best they can for the long-term success of the company. As such, we have described an ideal ESOP Plan.

Is your ESOP Plan ideal?

If you have other thoughts on provisions for an ideal ESOP Plan, please let us know and we’ll be happy to publish them.

PS Even this “ideal” ESOP Plan is not ideal. It does not address one problem. Please read the accompanying article on Early Diversification. OAW

An Early Diversification Program
A Worthy Addition to the Ideal ESOP Plan

Bill McIntyre

The “Ideal ESOP Plan” described in the accompanying article is boxed in by existing government rules and regulations. As such, it might be missing an appropriate provision for the following situations (in all cases assume the ESOP participant is 42 years old with 15 years of service):

1-I want to buy a house and have no savings. I need money for a downpayment.
2-I have an elderly mother with upcoming heavy uninsured medical expenses. I need cash.
3-I have 3 children who will be in college beginning in 4 years. Financial aid and scholarships won’t be enough. I need cash.
4-I like the ESOP but it scares me to have all my retirement eggs in one basket. I don’t want to wait until I’m 55 years old to begin diversifying my savings investments.

None of these participants would be satisfied by the Ideal ESOP Plan. [Would they be satisfied by your ESOP Plan?] For cases 1-3, with the Ideal ESOP Plan, the participant would have to quit, and then wait 6 years, to receive the needed cash – not a desirable outcome for either the company (good employees should not quit) or the participant. The participant in case 4 simply has no way to be satisfied by any ESOP Plan designed to stay within the government-prescribed box, so this participant stays at the company and is vaguely dissatisfied – not a desirable outcome.

But let’s think outside the box. Let’s think about a way to solve the problems for each participant in cases 1-4 and keep them as happy, productive employees. With this additional feature, we can make the “Ideal ESOP Plan” truly ideal!

One way would be to offer the required Age 55 Diversification at an age earlier than age 55, but required diversification applies only to stock in ESOP accounts, and many participants have accumulated large “other investments” (or “cash”) portions of their ESOP accounts.

Here is the early diversification program we designed and installed at ComSonics, Inc., the 100% ESOP-owned company in Harrisonburg VA at which I was previously employed as CFO. We called it Early Partial Liquidation; however, for this article, I’ll use the more generic Early Diversification Program nomenclature. The program’s purposes were to provide a mechanism for allowing current employees to receive cash and/or diversify their ESOP accounts AND remain an employee. Further, since they would have more control over their ESOP investment, they would feel more like owners, thereby contributing to our desire to maintain our ownership culture among all employees.

Here is how ComSonics’ EDP worked:

1-ESOP participants were eligible for EDP in the year after they had completed 7 years of service (thus, only 100% vested participants are eligible).
2-Once eligible, they had the right to elect to diversify up to 20% of their ESOP account (stock + cash), and they had the EDP option every year … until they elected it.
3-Once participants elected EDP, they had to wait 7 more years before they would be eligible again.
4-Participants electing EDP could elect to receive their EDP cash as:
   a-cash
   b-direct rollover into an IRA
   c-rollover into their 401(k)
5-Because this was a discretionary program offered by the company (i.e., not required by any government regulation) and we had no desire to have the EDP bankrupt the company, if the company did not have sufficient liquidity to pay the EDP, the ESOP Administrative Committee could decide not to honor EDP elections for that year, or to honor only a certain % of all requests. Participants affected by this decision would be first in line next year for EDP payments if they still wanted to elect EDP.

What has been ComSonics’ experience? A few participants elect EDP every 7 years while about half have never elected EDP. The others make their decision based upon stock price and/or their personal needs for a particular year. While I was there, about 50% of those that elected EDP took the money as cash, and about 50% rolled it over into an IRA or their 401(k).

Case 4 participants who were concerned about all their retirement eggs being in one basket were satisfied as they could implement their own personal diversification programs.

Cases 1-3, which represented actual employees – they all exercised EDP, and they all stayed employed at the company.

Every EDP request has been met when requested. The company plans for estimated EDP elections each year and never has had to turn down a request.

In all cases, the ESOP participants felt more like owners. If they so desired, they could receive some of their ESOP benefit and remain employees of the company. OAW