

EMPLOYEE
OWNERSHIP
CONFERENCE 2016



NCEO
NATIONAL CENTER FOR
EMPLOYEE OWNERSHIP

Don't Do That: Avoiding ESOP Problems

Track E1

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Serving the ESOP Community



DON'T DO THAT: AVOIDING ESOP PROBLEMS

- ❑ Plan Design – Management, Trustee and Board must be aware of how the plan design impacts their business
 - Shares allocated too quickly
 - Have and have Nots
 - Employee benefit levels
 - Distributions policies and Repurchase Obligation

DON'T DO THAT: AVOIDING ESOP PROBLEMS

- ❑ Synthetic Equity – what is it and why it is needed?
 - SARs,
 - Phantom Stock

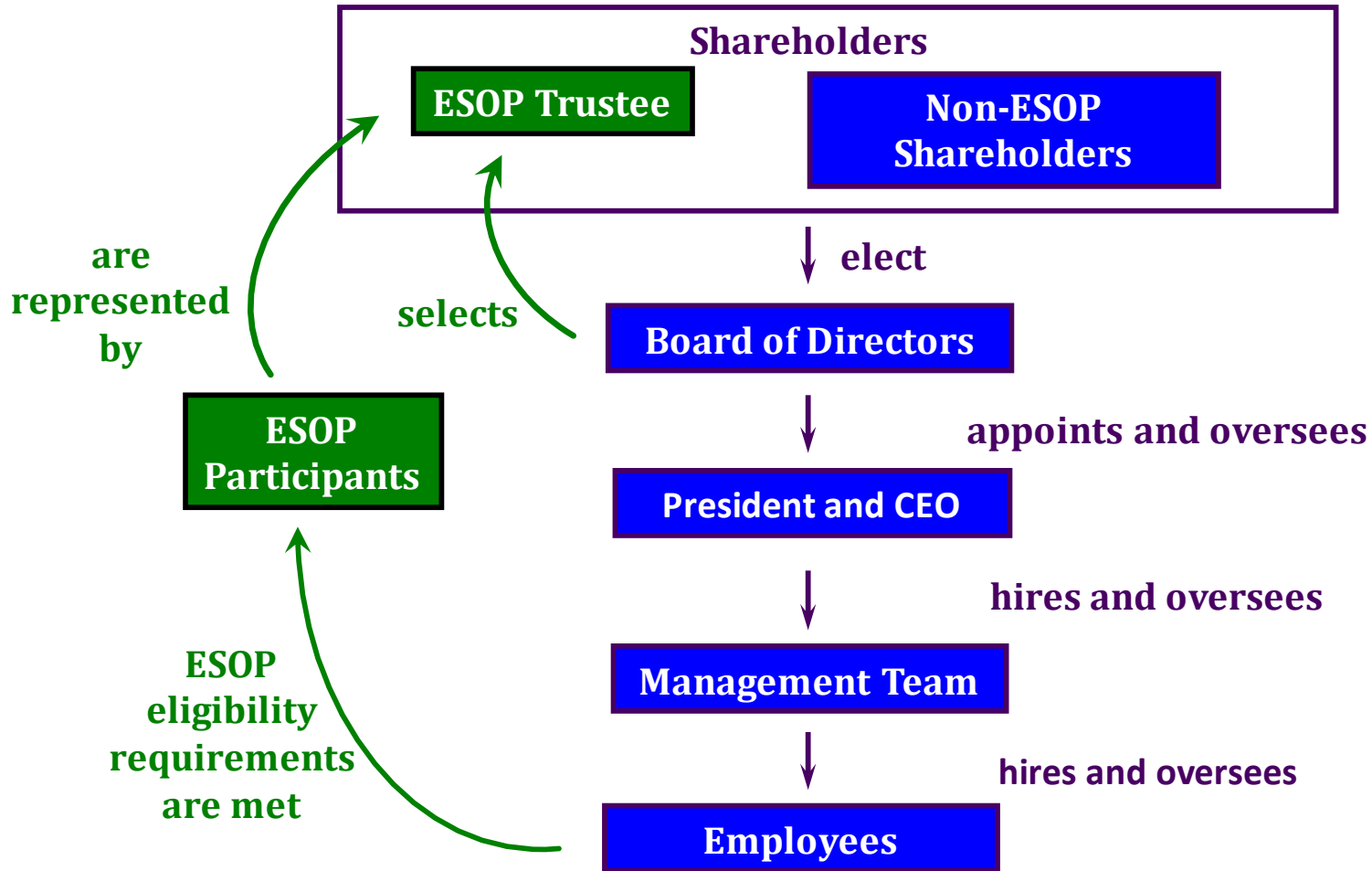
- ❑ Things that can go wrong:
 - Loss of S-election
 - Awards not intended:
 - Performance based vs Seniority based
 - Fairness – how much is too much?

DON'T DO THAT: AVOIDING ESOP PROBLEMS

❑ Boards of Directors

- Importance of a well functioning BOD
- What roles do they play
- Committees
- Who should be on the BOD?

DON'T DO THAT: AVOIDING ESOP PROBLEMS



DON'T DO THAT: AVOIDING ESOP PROBLEMS

- ❑ Internal Trustee – Fiduciary Issues
 - Hiring the Valuation Firm
 - Internal Trustee and Conflicts of Interests
 - Review of the Valuation Report

❑ Annual Valuation

- For the initial transaction versus the annual update
- Independence issues
- Vetting the management projections
- Good Data or "Garbage is garbage out"
- Test and challenge critical valuation assumptions
- If employment agreements, documents justifications and considerations in valuation
- Consistency

❑ Repurchase Obligation

- Importance of having RO Study kept up to date
- Plan design and length of internal loan
- Impact on corporate strategic planning
- Valuation issues – Excess cash

DON'T DO THAT: AVOIDING ESOP PROBLEMS

- ❑ Diversification requirements
 - Notices
 - Offer investment options in the ESOP, transfer to 401(k), or distribute

DON'T DO THAT: AVOIDING ESOP PROBLEMS

❑ Paying Dividends

- Allocate to participants based on ESOP account balance
- Unallocated dividends
- Pay to participants outside of the ESOP

DON'T DO THAT: AVOIDING ESOP PROBLEMS

❑ Communications

- Going beyond the minimum required
- Benefits of creating ESOP committees

❑ Voting Issues

- Proxy
- How to vote on unallocated shares
- How to vote on shares when the proxy isn't returned
- What issues should be brought to ESOP participants for voting?

DON'T DO THAT: AVOIDING ESOP PROBLEMS

- ❑ DOL Audit of ESOP
 - Recent trends and what to expect
 - Tolling Agreements

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For over 25 years Chuck has provided business valuations of privately held companies in various industries. He has prepared valuations for estate and gift tax, employee stock ownership plans (ESOPs), family business succession, bankruptcy and reorganizations, fairness opinions, marital dissolution, shareholder and partnership disputes, and mergers, acquisitions, and divestitures.

Chuck specializes in transactional consulting services including; assistance in business succession planning, mergers and acquisitions, ESOP feasibility and transaction structuring, ESOP transaction quarterbacking, assistance in obtaining financing, and other valuation related consulting services. Chuck has assisted companies with revenues of less than a million dollars to over half a billion dollars.

Chuck received his MBA with a concentration in Finance and Accounting from University of Hartford. He holds a Senior Accredited Appraiser (“ASA”) designation from the American Society of Appraisers. He serves as a member of the Valuation Advisory Committee of The ESOP Association and is a member of the National Center for Employee Ownership (NCEO).

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Bret Keisling is a founder and Managing Director of Capital Trustees, LLC, a boutique firm specializing exclusively on trustee and fiduciary engagements for the ESOP community. Bret has been involved in the ESOP community since 2008. He served as outside counsel for a multi-state, multi-million dollar employee-owned distribution company that became a 100% ESOP. After concluding the transaction, Bret was recruited to join the company, first as Senior Vice President & General Counsel, and then as President. During this time, Bret became active in the ESOP community and remains a strong proponent of the benefits of employee ownership.

In 2012, Bret formed Capital Trustees, LLC, with his partner. In addition, Bret is a principal of The Keisling Law Offices, which focuses primarily on business and real estate transactions and litigation. He was licensed to practice law in Pennsylvania in 2005 and in Maryland in 2006. He was admitted to practice before the United States Supreme Court in 2009.

Bret is a member of The ESOP Association and NCEO. Capital Trustees is a proud founding sponsor of the Pennsylvania Center for Employee Ownership.

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Leah Morgan Singleton uses a practical and business-focused approach to advise her clients on complex employee benefits matters, drawing on prior experience as a compliance consultant at a large human resources consulting firm and as a former small business owner herself.

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Leah focuses her practice on advising corporate, not-for-profit, governmental and individual clients in all matters relating to employee benefit plans and executive compensation at every phase, from plan design and implementation to plan termination, including ongoing compliance with applicable laws such as ERISA and the Internal Revenue Code.

Atlanta Magazine recognized Leah in its 2011 and 2012 lists of Georgia Super Lawyers and Rising Stars for Employee Benefits & Executive Compensation.