



Connection



THE MID-ATLANTIC CHAPTER ESOP ASSOCIATION NEWSLETTER

February 2008

Message From The President

The holidays are over, Santa has returned to the North Pole, and I'm sure glad all of that junk food is outta here! I have to admit however that this is my least favorite time of the year. This cold period between New Year's and Golf (golf is an official holiday, right?) is such a drag.

During this time I guess I will have to hunker down and get some work done. One thing on my agenda is to become more familiar with The ESOP Association's new blog (<http://www.esopassociation.org/blog/default.asp>). I also want to dig into more blogs in general to uncover any mention of ESOPs out there in the digital world. As I mentioned in the previous newsletter, I'm concerned that the public has an overall negative perception of ESOPs because of all the harmful press coverage regarding Enron, United Airlines, the Tribune deal, etc. I am especially concerned about how this is being perceived by generations X and Y as they receive a much higher percentage of their news via online mediums. These young people need to know right now that ESOP's can be a tremendously positive thing and can also put a lot of money in their pockets, especially if they "get in early".

I will also be working with the other officers and steering members in the MAC to develop exciting and beneficial programs for our members. Tom Roback, our Capitol region VP, just completed a great program about ESOPs, mergers, and acquisitions (M&A). The other VP's are planning events in their areas soon, and we are all gearing up for the annual MAC Half-Day Spring Conference to be held on Friday, April 11th. The theme will be "CSI: ESOP" and will cover a lot of ESOP "crimes" that you should avoid.

Finally, we all need to begin planning now for The ESOP Association's Annual Conference in Washington, DC, May 13th thru 14th.

Therefore, all of you should dust off your schedules and get your plans in motion, reserve your hotel rooms, and commandeer the company car. See you soon.

*Keith Robertson President,
The ESOP Association's Mid-Atlantic Chapter*

Crime Scene Investigation: ESOP

April 11, 2008

Doubletree Hotel, Charlottesville, VA



Time To Document For AACE

We all know that TEA sponsors a competition known as **AACE** for companies who communicate their ESOPs to their respective employee owners. Yet many companies never really focus on the AACE competition until it is time to send in their entries. The fact is that NOW is when you should be documenting your communications program and planning your AACE entry for the 2008 judging. The deadline will be around the first of March 2008, but the work should begin **now**.

Start documenting everything you do to communicate the ESOP. Get a little crazy with your camera—photos always help to "dress up" and clarify an entry. Visit the AACE section of the TEA web site and begin deciding how you want to showcase your program.

Although you won't actually be sending anything in to the competition until March of 2008, your AACE benefits can begin NOW as you document and evaluate the components of your future entry. Don't delay. Begin the road now that can take you to the winners' spotlight. MAC had three winners in 2007 (CALIBRE, ComSonics, and MidSouth). Let's make it six in 2008!

All the information about the AACE competition is shown on the TEA web site, including past winners with photos and contact information. If you have specific questions not answered there, please feel free to call Pat Barnes, AACE Program Manager, at (304) 274-2517 or Carolyn Zimmerman, MAC Secretary, at (434) 974-6550.

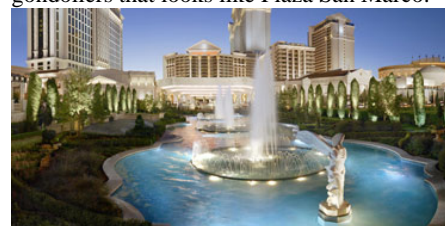


VIVA
LAS
VEGAS



A number of MAC'ers attended the 2-day TEA conference held November 8-9 at the Venetian. There were lots of interesting sessions and it was great fun walking thru the casino each time on the way to the conference rooms.

Problem is there's nothing to do in Vegas once the sessions are over – right. The Venetian is a lovely hotel with a mall area replete with a fake sky and gondoliers that looks like Plaza San Marco.



Hope to see you there next year at The ESOP Association's Las Vegas Conference and Tradeshow November 13 & 14, 2008

ESOP Meeting Tastes Great, Mentally Filling

By Paul Horn

Charlottesville, VA, October 26...The Mid-Atlantic Chapter (MAC) of the Employee Stock Ownership Plan (ESOP) Association held its 14th annual conference titled *ESOPs: Filling Our Plates* with yet another year of record attendance.

The 140+ conference attendees were greeted by a movie popcorn cutout and pictures of gastronomical delights fitting our theme. Following breakfast, MAC President Keith Robertson greeted the group in his chef's hat and apron. He recognized conference sponsors, companies sending multiple attendees, and Carolyn Zimmerman for her TEA Lifetime Achievement Award. Keith also dazzled us with witticisms courtesy of a relative; such as if FedEx and UPS merged the company's name would be FedUp. TEA Pres. Michael Keeling then spoke on the tax reform pot simmering on Capitol Hill and the shifting tides for ESOPs. A large contingent of TEA staff also was on hand to see a chapter meeting live and in person.

Attendees dined first on appetizers such as "Soups to Nuts" on ESOP basics, and "Mixed Greens" on ESOP distributions, along with the savory bouquet of stock valuations from the "Wine Cellar." Since the group was hungry for more, a second round of appetizers included "Spicy Buffalo Wings" on ESOP communication, and "Fried Calamari" on plan governance. After a respite to digest, the entrees of "Maine Lobster" (ESOP administration) and "Peking Duck" (S Corp. and other recent developments) were served.

After a buffet lunch (awesome apple pie), Steve Sheppard, former CEO of Foldcraft Company, gave an inspirational speech on why ESOPs matter. Then it was time for some exercise and an exploration of ESOP indigestion. Paul Horn's song "Shares, Glorious Shares," sung to the tune "Food, Glorious Food" from the musical *Oliver!*, made its way-off Broadway debut thanks to the volunteer vocals of one spirited attendee.

Next came dessert, a choice of "Banana Split" (ESOP company experiences) or "Upside Down Cake" (topsy-turvy ESOP questions). Then it was time for the famous MAC version of the Employee Ownership Foundation (EOF) raffle. The big prizes this year were an iPod, digital camera, and George Foreman grill. Several sponsors also contributed their own giveaways. The raffle total stood at \$446 just minutes before the first number was to be pulled when Tom Roback of Blue Ridge ESOP Associates got us to an even \$500 with an additional \$54 contribution. Everyone who bought a ticket helped make a contribution to this important cause.

Thanks to all our great speakers and our Chapter Administrator Deb Tompkins for making our annual conference a tremendous success. See everyone next year!

Thanks to the Conference Sponsors



Breakfast Meeting: Capital Region

By Paul Horn

A large group came to hear Denise A. Jackson of Squire, Sanders, & Dempsey, LLP, and Marie S. Minton, CFA, CPA, of Blue Ridge ESOP Associates, discuss **M&A : Before and After ESOP**, on January 10 at the MAC Capital Region Breakfast meeting.

Marie began the session with an explanation of leveraged ESOP basics and some key differences between C and S Corp. ESOPs, like 1042 treatment for C and anti-abuse testing for S.

One way to rejuvenate a "mature" ESOP is through a leveraged acquisition of another company. A contemporaneous valuation is needed if the ESOP buys additional stock in the transaction.

A simple acquisition approach is for the ESOP company to borrow from the bank to buy the target stock with cash. The seller has capital gain treatment and the buyer may issue new stock in connection with the deal that it then sells to its ESOP.

To limit the buyer's potential liability for undiscovered problems with the target, Denise explained that the ESOP company buyer may establish a subsidiary to acquire target. The buyer sells its subsidiary stock to its ESOP via an inside loan. The subsidiary then borrows from the bank to buy the target stock and merge target into the subsidiary. The ESOP then swaps its subsidiary stock for the same value of parent stock and, presto, parent again owns the subsidiary.

If the sellers want 1042 treatment, the sellers could exchange their stock for the buyer's stock and then sell this stock to buyer's ESOP and elect 1042. For this to work, however, the sale to the ESOP must satisfy the "continuity of interest" doctrine for the initial stock swap to be a tax-free. This doctrine requires the seller's new stock interest to be substantially similar to be a tax-free exchange rather than taxable as a dividend. Some practitioners take the view that this doctrine is satisfied because the ESOP is a purchaser independent of the buyer and the sale to the ESOP is not a disguised dividend by the buyer. However, the IRS might disagree with this independence under the "step transaction" doctrine, particularly if the ESOP trustees were company executives.

To avoid these issues, as well as to permit 1042 treatment where the buyer is an S Corp. ESOP, the target company could set up its own C Corp. ESOP to buy the owner's stock. The ESOP companies then could merge with the ESOP owning both companies. More commonly, the buyer will guarantee the seller's ESOP loan and then will issue and swap new buyer stock with the target ESOP stock. The ESOPs are then merged and ESOP still owns buyer and buyer now owns target.

When the ESOP company is being sold, it may be wise to delay distributions until the updated sale value is applied. In addition, the buyer may place some sale proceeds in escrow or apply an earn out which could require additional distributions to participants at a later date.

Other post-merger issues include integrating two ESOP participant groups, handling multiple ESOP loans and allocating loan payments and repurchase liability among the participating employers. If using put options, for example, the repurchase obligation maybe allocated to different members of the controlled group.

Thanks to Bob Webb and Squire, Sanders & Dempsey LLP for hosting this meeting.

Paul
Opines



Paul Opines

In a hierarchy, every employee tends to rise to his level of incompetence.

The above adage is known more commonly as the “Peter Principle,” named after its author Laurence Peter. So what does this phrase really mean and how might it apply to ESOP companies?

For starters, the phrase catches our attention because it says the opposite of what we expect – that everyone should rise to his (or her) level of competency. We identify with its pessimistic view of the dysfunctional workplace that promotes employees past the point of competency and into the realm of bungling. In other words, we eventually will have ample opportunity to screw up.

On the other hand, if we examine this phrase further, perhaps the problem lies not with employees but rather with imposed hierarchies and pecking orders. These inhibiting structures and bureaucracies may prevent the real cream from rising to the top.

All hope is not lost, however, because companies can break free of the Peter Principle. How? By creating meritocracies, not hierarchies, *what you know and do, not who you know and appear to be* are more important. Sports teams function this way; imagine one based on favoritism rather than performance and you have a certain cellar dweller.

To make sure the Peter Principle is not at work at your ESOP company apply the following antidotes:

- Use an objective system to measure and reward employee performance that is as free as possible from supervisor bias.
- Base a large part of the employee review on customer feedback, either external or internal.
- Decentralize decision-making and make people accountable.
- Use 360-degree feedback to evaluate supervisors.
- Have profit sharing where everyone shares in proportion to individual and team contributions. Cost concerns? Put some of the profit sharing into the retirement plan subject to a vesting schedule (see next bullet).
- Examine turnover. If too high, some of your best people may be rejecting your organization. Go back and reapply the above bullets.

By creating a playing field of eager employee-owners, competents will rise to the top and incompetents will find seats on the sidelines.

Paul Horn

More Pictures MAC Annual Meeting



Keith Robertson, MAC President, welcomes the group.

Jeff McCartney and Brandi Garrett serve up the “Soup to Nuts” course.



Jan Thomas dices up distributions.



Celebrate 30 years
Plan on attending the ESOP
Association’s Annual Conference
May 13-14
The Hilton Washington
Washington, D.C.





Dr. ESOP

Dear Dr. ESOP:

I am on our company's ESOP Advisory Committee. We've tried many ways to get employees interested in our ESOP but enthusiasm is lagging. What can you suggest to help perk things up?

Tired in Tidewater

Dear Tired in Tidewater:

Let me first suggest adding caffeine to the water cooler. That generally results in some stimulation.

But seriously, if your stock price is doing well, employees should be excited about the ESOP at least once a year when they get their statements. The question is how do you keep them excited year-round? Or, if your stock is not doing so well, what then?

The key is to develop an employee-focused company culture of which the ESOP is just one part. **The goal is to get employees excited about working at your ESOP company, not just excited about the ESOP.** You can find out great ideas on creating an enthusiastic employee ownership culture at your company by attending The ESOP Association and Mid-Atlantic Chapter meetings.

Remember, focus on making your company an attractive place to work and the ESOP should sell itself.

Dr. ESOP

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Welcome New MAC Members 2008

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Stephanie Adams, *Moore's Electrical & Mechanical Construction Inc.*, Altavista, VA
Michael Head, *Schonstedt Instrument Co.*, Kearneysville, WV
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PERSONAL MEMBERS

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Please let us know if we missed you.

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