



Best Practices in Corporate Governance: How to Recruit and Run an Effective Board

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Presented by

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Introduction

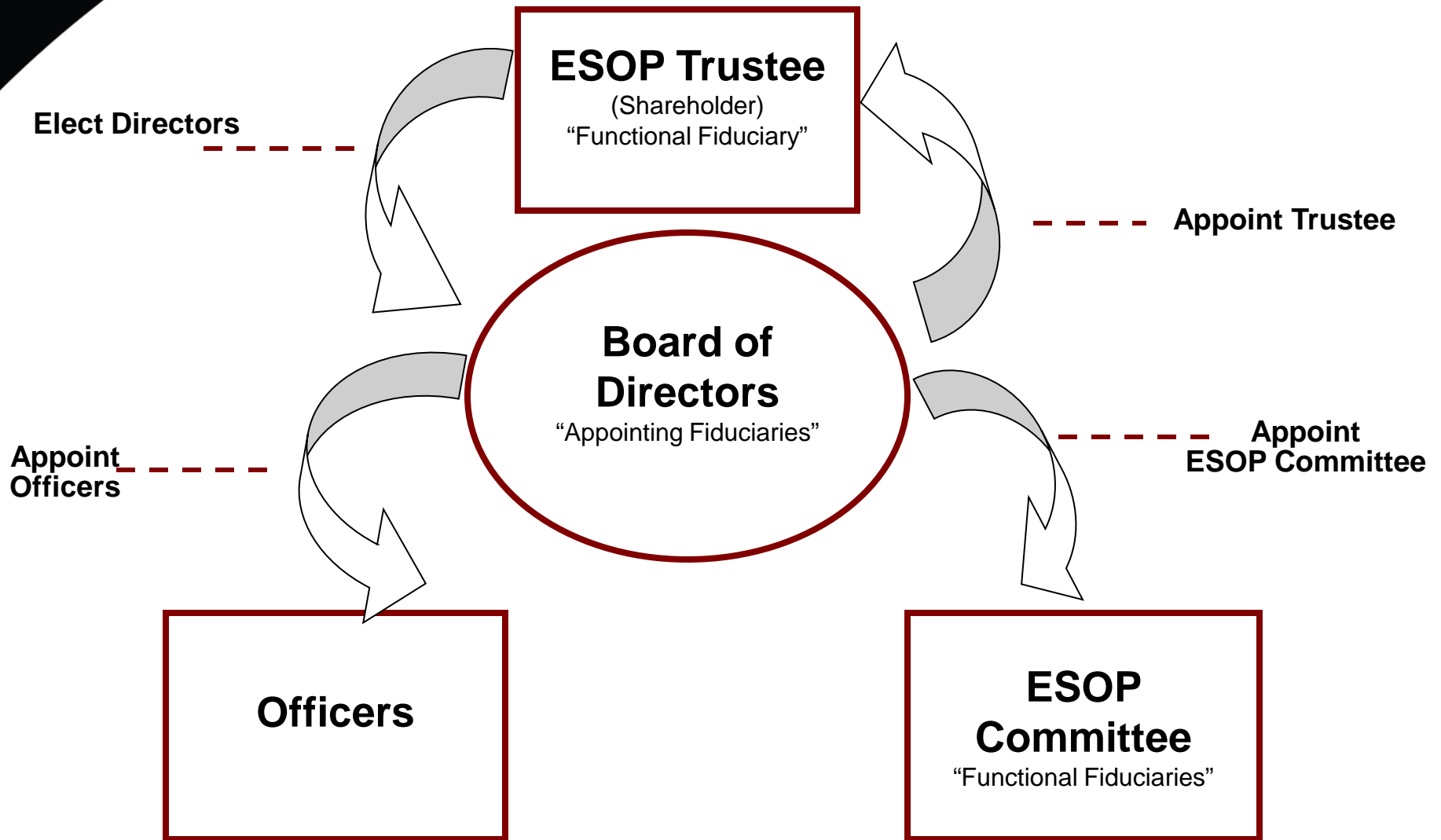
What is “Corporate Governance”?

- A framework to govern the relationships among shareholders, directors and officers
- Method by which directors supervise officers and the business

Who are the Main Participants in Corporate Governance?

- ESOP trustee and its advisors
- Board of Directors and its advisors
- Officers
- Shareholders
- In cases of “pass-through” voting, ESOP participants

Corporate Governance Structure and Participants



The ESOP Trustee

- Issues Board Considers re: Trustee Appointment
 - Who should serve?
 - “Inside” vs. “outside” trustee
 - Conflicts of interest for “inside” trustee
 - Board member role vs. officer role vs. trustee role
 - If inside trustee, know when to seek counsel
 - Should trustee be “directed” or “discretionary”?
 - Usually directed except:
 - annual valuation
 - special events like sale of company

The Board of Directors

- Board has a duty under ERISA to:
 - Monitor the actions of the ESOP trustee (and any other plan fiduciaries it appoints)
 - Understand how company stock is valued
 - Confirm process is adequate
 - Summary of annual valuation
 - Reasoning for valuation
 - Make sure repurchase obligation is taken into account
 - If necessary, take corrective action

The Board of Directors

- Duty of Care

- What does this mean? Be well informed and act reasonably

- Know the company, its operations, financials, the industry and competitors, its business cycle, what makes it a successful year

- What does this mean in ESOP company context?
Board must understand:

- Trustee's valuation process

- Make sure valuation process is adequate (if assumptions or forecasts changed, why?)

- Board is entitled to rely on advisors if reliance is reasonable

The Board of Directors

- Duty of Loyalty
 - Director must act in good faith and in best interest of corporation
 - What does this mean?
 - Don't let personal financial interests conflict with corporation's interests
 - What does this mean in the ESOP company context?
 - When board approves lease of real estate owned by director
 - Get a third party appraiser to set fair market rate

The Board of Directors

- Board Committees –
 - Chaired by “outside” directors (non-employee, no contract for other services)
 - Add expertise (e.g., accounting, finance, corporation’s area of business, provide an independent point of view)
 - Criteria for selection – technical expertise, experience in corporation’s industry, experience on other ESOP company boards
 - Typical standing committees
 - Audit – often includes “financial expert”
 - Compensation – for CEO and Board
 - Nominating
 - Corporate Governance
 - Committee
 - Composition, organization and functions
 - Procedures for nomination and removal

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