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# Employee Stock Ownership Plans as a Business and Tax Planning Vehicle

Leveraging ESOPs for Business Succession and Estate and Retirement Planning

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WEDNESDAY, JANUARY 25, 2012

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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Today's faculty features:

Anthony J. Jacob, Partner, **Hinshaw & Culbertson**, Chicago

Anthony E. Antognoli,, Partner, **Hinshaw & Culbertson**, Chicago

Mary Josephs, Executive Managing Director, **Verit Advisors**, Chicago

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# Employee Stock Ownership Plans as a Business and Tax Planning Vehicle

## Leveraging ESOPs for Business Succession and Estate and Retirement Planning

January 25, 2012

# Using an ESOP

- An ESOP, or an “employee stock ownership plan,” is a type of employee benefit plan that invests primarily in employer stock and provides certain tax advantages
- ESOPs are typically used
  - as a succession tool for owners of privately held companies
  - to obtain financing at a lower after-tax cost
  - to provide an additional employee benefit

# Parties Involved in a Transaction

On the **Buyer's** side of an ESOP Transaction:

- Trustee – Usually a Third Party firm or person who represents the Trust purchasing stock
- Valuation Firm – Represents the Trustee to provide determination of fair market value
- Legal – Trustee will require legal counsel

## Trustee Examples

- Reliancee Trust
- Greatbanc
- First Bankers Trust
- State Street

## Valuation Firm Examples

- SRR
- Columbia
- Duff & Phelps
- Houlihan Lokey

# Parties Involved in a Transaction

On the **Seller's** or Company side of an ESOP Transaction:

- Financial Advisor – An Investment Bank or Advisory Firm that negotiates on behalf of the selling shareholders (independent third-party)
- Corporate Counsel – Provides counsel to the Company
- ESOP Counsel – Special ESOP Counsel to the Company
- Accountants – Provides support on historical accounting issues and ESOP impacts
- Bankers – May provide financing the ESOP transaction (Bank Counsel)
- ERISA Plan Administration

# Examples of ESOP Companies

Many Companies from various backgrounds have chosen to use ESOPs as a form of their ownership structure

- Clif Bar
- New Belgium Brewery
- HNTB
- Publix Supermarkets
- Parsons
- Amsted Industries
- Harps
- Austin Industries
- Terracon
- Hobbico
- Elan-Polo
- Burns & McDonnell
- S&C Electric
- Carl Warren
- Hy-vee
- Roberts Hawaii
- Black & Veatch
- EOD Technology
- Herff Jones
- Dunn-Edwards Paint
- Appleton Paper
- API Group

# Using an ESOP (cont'd.)

Considerations for a company when deciding whether to use an ESOP include:

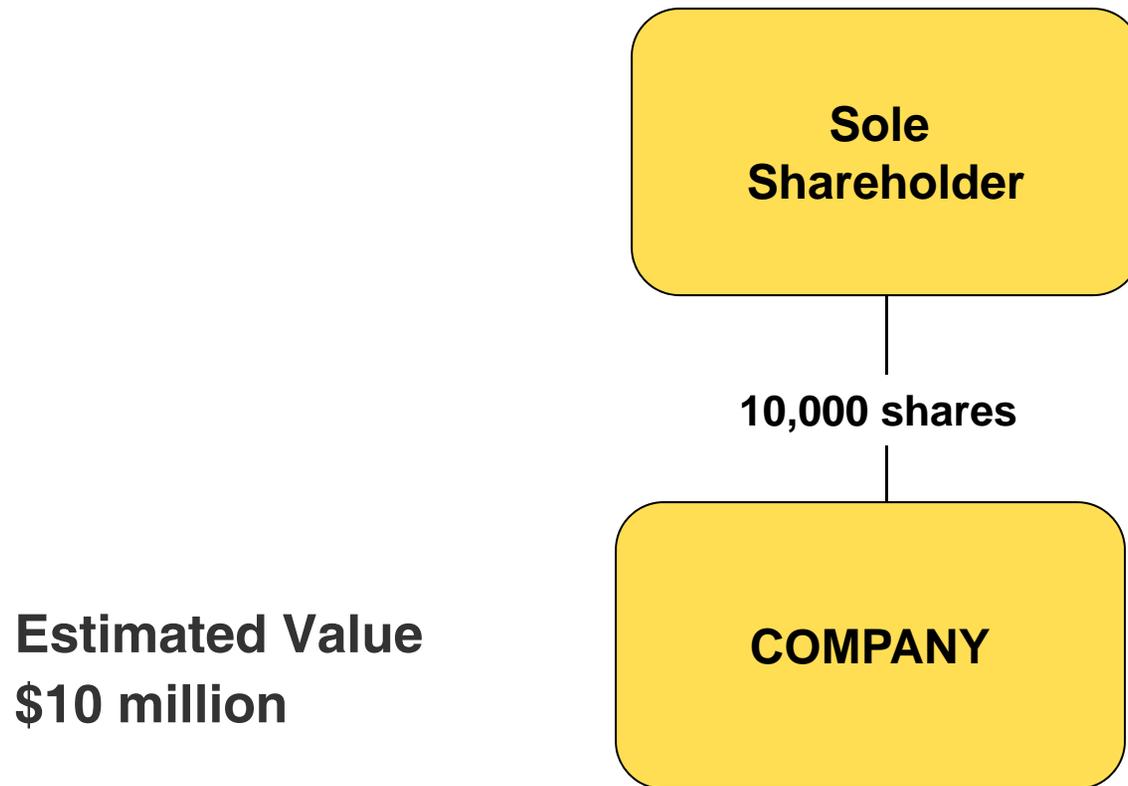
- Valuation of company
- Stable nonvolatile history of profitability
- Debt capacity
- Strong management team in place or a management succession plan
- Number of employees
- Amount of payroll
- Little employee turnover

# Is an ESOP Right For Me?

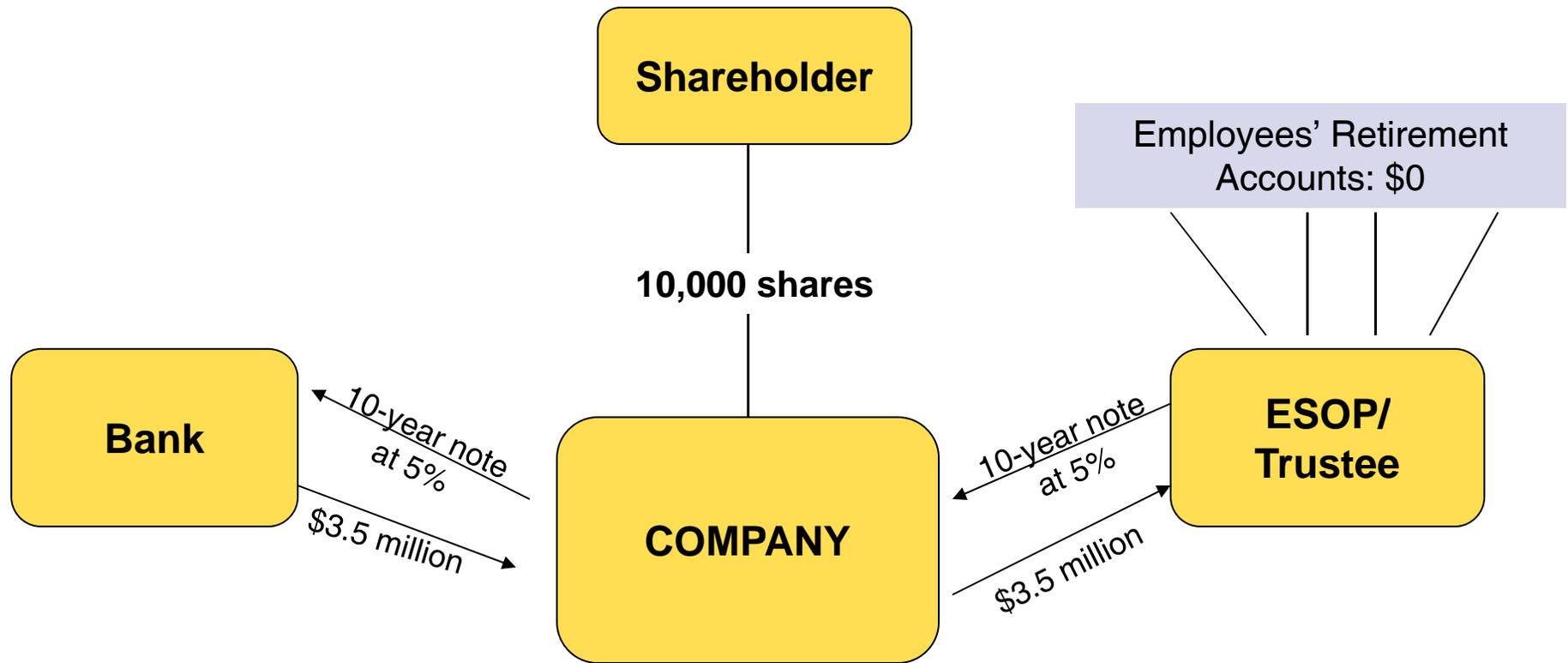
Understanding an ESOP structure is usually done upfront with a feasibility analysis, which would include:

- The ESOP evaluated against other alternatives along side the owners objectives (M&A, Private Equity, Status Quo, Dividend Recap, etc.
- Debt capacity
- Shareholder & Estate Planning
- Benefits being provided to employees

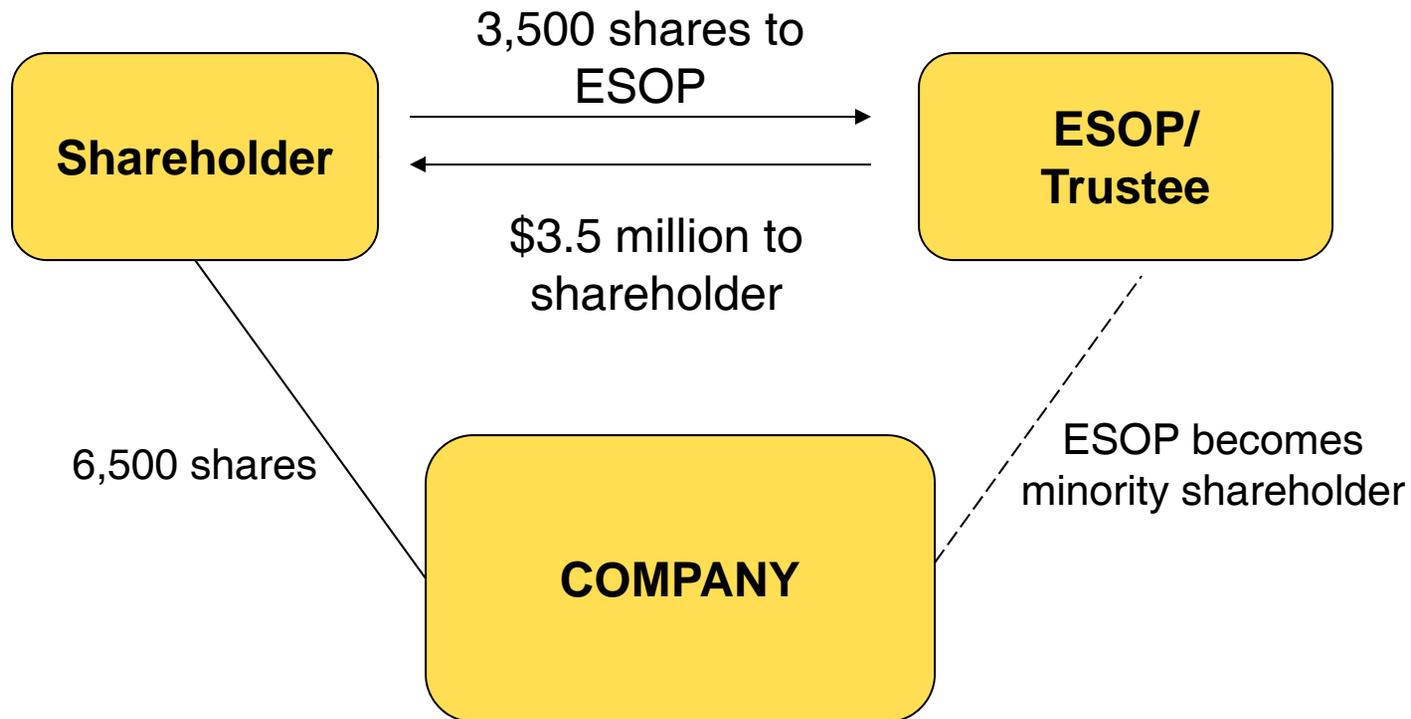
# Beginning Structure



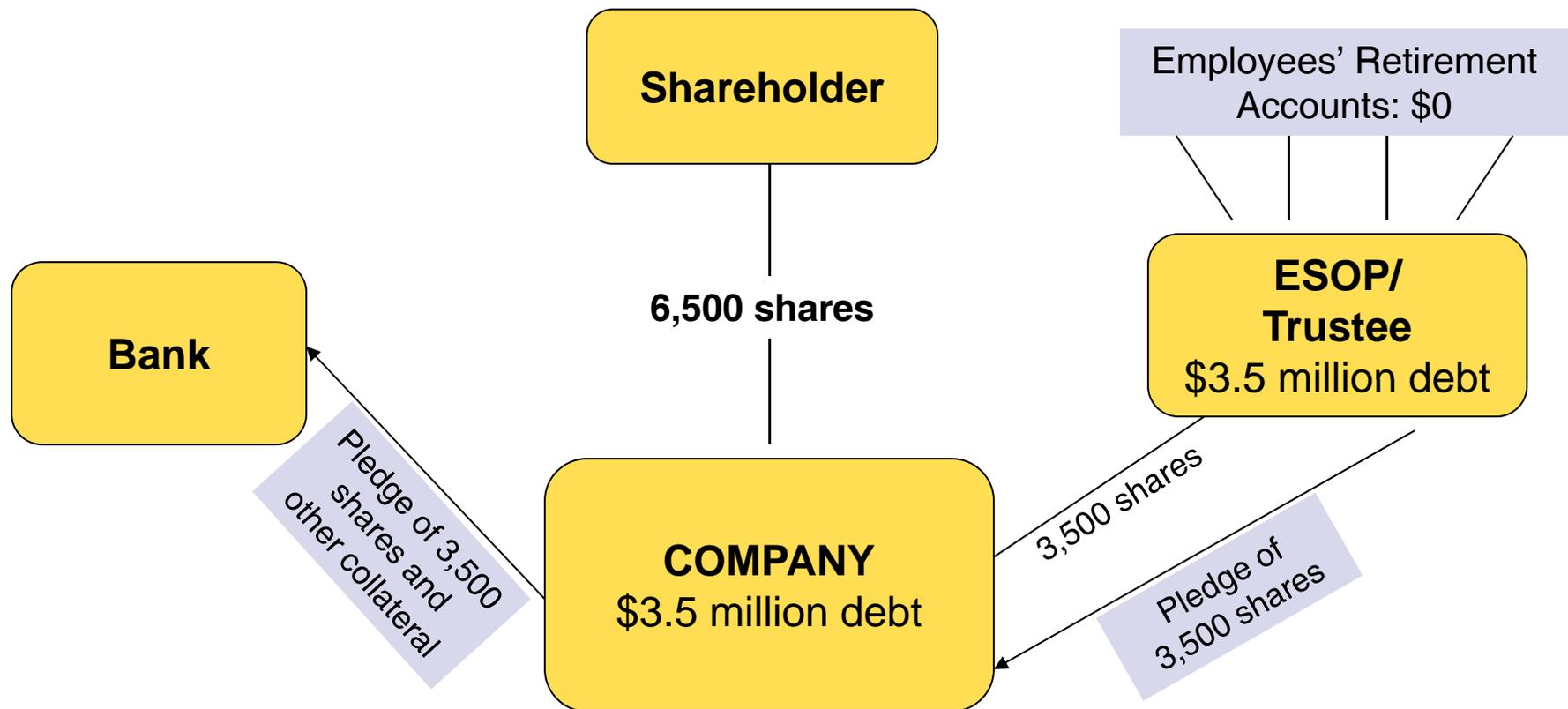
# Step One: Bank Financing



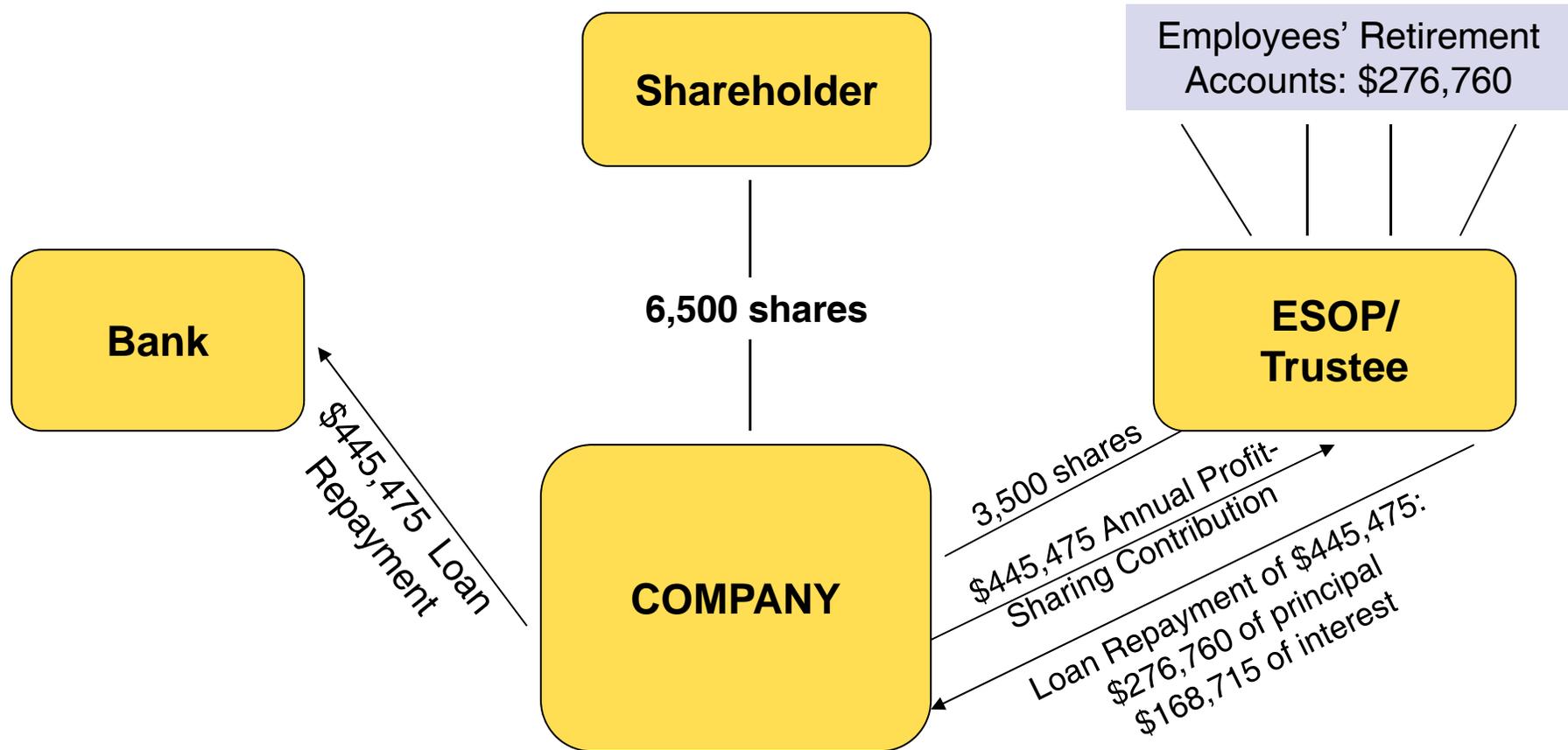
# Step Two: Stock Purchase



# Result of Steps One and Two

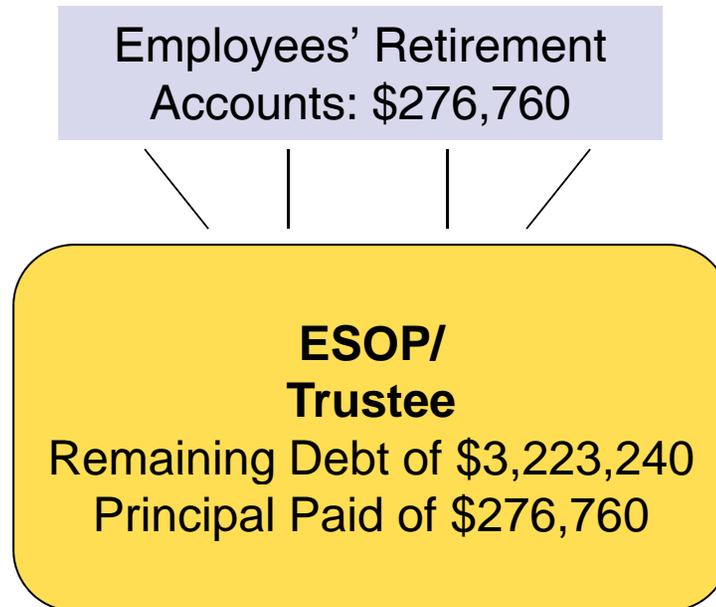


# What Happens After the First Year?



# ESOP Status After the First Year

(Assumes Value of Company Stays the Same)



### ESOP Balance Sheet

3,500 shares	\$3.5 million
Debt	(\$3,223,240)
Net Value	
ESOP's Assets	\$276,760

### Employees' Retirement Accounts

276.76 shares released from pledge and allocated to accounts

Value of accounts is \$276,760

# Tax Advantages of ESOPs

- A leveraged ESOP provides a technique for a corporation to borrow and then, in essence, deduct both principal and interest
- Shareholders who sell stock in a privately held “C” corporation to an ESOP, which owns 30% of all stock after sale, may defer tax on the proceeds pursuant to Code Section 1042

# Tax Advantages of ESOPs (cont'd.)

- Dividends paid on “C” corporation stock held in an ESOP are deductible if they are used to pay off the ESOP loan, are paid to the ESOP participants in cash, or are used by ESOP participants to reinvest in additional employer stock (Code Section 404(k))
- Corporate earnings attributable to an ESOP's ownership of stock in an “S” corporation are not subject to federal income tax

# Tax Attributes and Consequences

- Impact to business entity
- Impact to business owner
- Impact to employee/shareholder

## Presenters

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### Anthony J. Jacob, Partner

Hinshaw & Culbertson, Chicago

Mr. Jacob is engaged in general corporate practice, including various aspects of private merger, acquisition, divestiture and employee benefit matters. In addition, Mr. Jacob's practice includes secured and unsecured lending transactions, asset securitization and structured finance, ESOP loans, initial debt and equity offerings, primary and secondary debt offerings, corporate reorganizations and restructuring, joint ventures and syndicated commercial financing transactions. His clients include domestic and foreign corporations, limited liability companies and partnerships, and banks and other lending institutions.

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## Presenters

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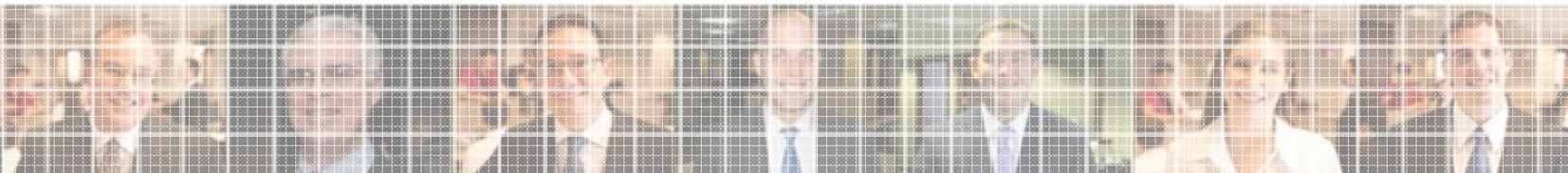
### Anthony E. Antognoli, Partner

Hinshaw & Culbertson, Chicago

Mr. Antognoli focuses his business practice in the representation of large and mid-size clients in the areas of federal taxation, employee benefits, ERISA and general corporate matters. He primarily counsels clients regarding transactional matters, but has also represented clients in controversies before the Internal Revenue Service and U.S. Department of Labor, and in litigation in the United States Tax Court and the United States District Court for the Northern District of Illinois.

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## Mary Josephs Founder

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Ms. Josephs is Founder and CEO of Verit Advisors LLC, a specialized middle market investment banking firm. Ms. Josephs is a nationally recognized leader with over 28 years experience with ESOPS as a specialized solutions-oriented succession and liquidity transaction for middle market companies. Ms. Josephs has advised, structured and closed over 200 financings for middle market companies representing over \$7 billion in senior credit and nearly \$30 billion in enterprise value, most of which have supported ESOP transactions. Ms. Josephs founded and built the ESOP group at LaSalle National Bank into a practice that was recognized as the nation's leading ESOP financing team. Ms. Josephs also co-founded and launched a leading ESOP Advisory practice for ABN AMRO LaSalle Corporate Finance (and subsequently Bank of America-Merrill Lynch). Upon LaSalle's acquisition by Bank of America, Ms. Josephs, as ESOP Solutions Executive for Bank of America Merrill Lynch, had the opportunity to lead a successful ESOP capability for all of Bank of America-Merrill Lynch.

Over the past 25 years Ms. Josephs has held and continues to hold leadership positions throughout the ESOP community including: past chair of The ESOP Association's Finance Advisory Committee, past member of The ESOP Association's Board of Directors, past and current board member for The National Center for Employee Ownership, current Advisory Board member for Employee-Owned S Corporations of America, current member of The ESOP Association's Advisory Committees and lifetime member of The ESOP Association's Board of Governors. Ms. Josephs has written frequently and spoken at well over 100 conferences nationally on issues related to succession and liquidity alternatives for closely held businesses, including ESOPs, ESOP financing, ESOP M&A, and other corporate finance solutions.

Ms. Josephs holds a BA in Economics and French from Marquette University and an MBA in Finance from the University of Chicago. Ms. Josephs is a member of NASD: Series 24, 7, and 63. Ms. Josephs is on the board of Big Shoulders, a member of the Economic Club of Chicago and an alumnae of Leadership Greater Chicago.

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