**Moving Toward 100% Employee Ownership through ESOPs: Added Complexities in Add-on Transactions**

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**Abstract**

The academic and practitioner literature on Employee Stock Ownership Plans (ESOP) has developed significantly over the past decades, particularly with respect to the impact (improved growth and productivity) and different types of ESOPs (leverage and non-leveraged).

Yet, despite ESOPs being well-conceptualised, the deals struck in the real world are often more complex endeavours than suggested by the literature. While there are examples of ESOP deals that effectively take firms into employee ownership in a one-stage process, it is often the case that ownership is transferred in multiple steps, which adds layers of complexity to the deal-making process.

In addressing this added complexity, the article will introduce and discuss concepts of ESOPs before providing a detailed description of what an *add-on transaction* entails. In doing so, we are particularly interested in describing key steps of such a deal with focus on the impact on the business and the employee-owners.

The paper will provide readers with much needed additional insights into the widely used practice of multi-tranche ESOPs. Understanding who the agents are involved in the process, as well as the impact and potential pitfalls of add-on transactions are crucial factors in developing ESOPs as an alternative to external buy-outs.

**Introduction**

This chapter focuses specifically on financial transactions to create ESOPs rather than the background and research on ESOPs in the U.S. While many countries have cooperatives or similar member or employee-owned firms, the U.S. has many debt-financed ESOPs. Since being established in 1973, Employee Stock Ownership Plans have been the most influential approach to transferring ownership to employees in the US, partly because with the company providing the collateral required through a trust, employees are not required to finance the purchase of shares themselves. As noted in the chapter on ESOPs by Corey Rosen, the *National Center for Employee Ownership* (NCEO)[[1]](#footnote-1) estimates that at the end of 2014, there are about 9,000 employee-owned companies existed that have used ESOPs and similar plans to transfer varying percentages of their stock, estimated at about $ 1 trillion to about 15 million employees who are participating in the schemes. Projections based on their database also suggest that a significant proportion of ESOP plans will be 100% employee-owned.

With some exceptions[[2]](#footnote-2), much of the academic and practitioner literature conveys ESOP transactions to be simple, one-stage transfers of shares to employees or a trust that administers the shares on behalf of employees. In reality, multi-stage ESOP transactions are the norm because few companies can afford to borrow, collateralise and fund a 100% buy-out of the existing owners at fair market value[[3]](#footnote-3).

This article will explore ESOP transactions. In doing so, we will provide a background on ESOPs and the two main types of ESOP transactions – leveraged and non-leveraged – before zooming in on add-on ESOP transactions.

**ESOPs: Purpose and Background**

The purpose of an Employee Stock Ownership Plan is to enable employees to participate in the ownership of their company without having to invest their own money, thus extending ownership to even the lowest paid employees. Under U.S. corporate law, corporations can be divided into C corporations and S corporations. A C corporation pays U.S. Federal corporate taxes at the corporate level, whereas an S corporation passes corporate income to individual shareholders who then pay the taxes. Retiring or departing owners of a closely held C corporation who wish to cash out their ownership and sell to a buyer[[4]](#footnote-4) benefit from a readily available market for their shares[[5]](#footnote-5) by virtue of selling them to the ESOP and the tax advantages that come with ESOPs[[6]](#footnote-6). An ESOP has the mandate to primarily invest funds in employer stock and is overseen by the Internal Revenue Service and the US Department of Labor.

The ESOP is either the recipient of company stock contributed by the company itself or receives money to buy shares in the company. The shares are not directly held by employees but in a trust, which is the holder of record for all shareholder purposes and allocates a proportion of shares according to income or an alternative basis[[7]](#footnote-7). Using a trust structure to manage the ESOP has two clear benefits: 1) as additional layer of governance to monitor corporate management and Board of Director actions are aligned to the objectives of the ESOP participants; and 2) it exempts ESOP participants from paying income tax on the allocated shares at the time they are awarded[[8]](#footnote-8).

There is a breadth of research suggesting that ESOP ownership has positive impact on company performance and growth, job safety, employee satisfaction, retirement assets and compensation[[9]](#footnote-9) especially in those companies that are majority-owned by ESOPs and those with participatory management[[10]](#footnote-10). While ESOPs can be a motivating factor for employees, management and owners, mutual agreements need to be reached between the involved parties, thus representing employee-owners’ interests[[11]](#footnote-11).

Critics often cite the inherent risk of ESOPs being used as quasi-retirement plans because, unlike other retirement schemes that aim to diversify investments, ESOPs concentrate retirement assets in one firm; thus a firm’s default could have serious financial implications for employee owners[[12]](#footnote-12). While it reflects useful commentary at a theoretical level, research has shown that in reality ESOPs are often resilient to crisis and have lower default rates than comparable non-ESOP companies[[13]](#footnote-13). In addition, Kruse[[14]](#footnote-14) has shown that ESOP plans that are combined with other 401(k) retirement plans result in a considerable higher value of employee stock per participant ($27,244) when compared to other defined contributions plans.

The mechanisms by which ESOPs operate vary depending on a number of factors including whether they are leveraged or not, and whether new shares are issued or existing shares transferred. Still the underlying functionality is broadly similar. Most ESOPs are leveraged and many involve financing from an external source, usually a bank or financial lender; however, it is useful to first explore the mechanics of a non-leveraged ESOP.

*Non-leveraged ESOP (NLE):*

NLEs are financed directly by the sponsoring company which contributes newly issued or existing stock, or contributes cash to the ESOP to finance the purchase of shares directly from shareholders exiting the business. This configuration is often used as a way to gradually build enough equity to facilitate a leveraged transaction for a larger percentage ESOP transaction.

A NLE can be used by owners wishing to transfer ownership to employees by making use of the tax advantages an ESOP enjoys, particularly the deduction in the current income tax for the amount of the contribution and the possibility to defer capital gains tax by the seller if the ESOP holds 30% or more of the outstanding stock of the company immediately after the transaction and as long as within 12 months[[15]](#footnote-15) of the ESOP creation the seller uses the proceeds to invest in the correct types of replacement securities as outlined in Section 1042 of the US tax code. These types of transactions can only be used in closely held C corporations. Once the transaction is finalised, the C Corp status can be changed to that of an S Corp to benefit from lower tax levels on the income which is only payable at the individual level.

Essentially, the set-up of the plan only involves five parties: the owner/seller, the company, the ESOP, the trustee for the ESOP and the employee participants. As illustrated in Exhibit 1, the company finances the ESOP by contributing cash used by the ESOP to buy stock from the seller of the company, or by contributing shares to the ESOP directly from the company. The shares are held by the ESOP trust which allocates shares to employees based on equitable principles, for example income. An employee accumulates shares until exiting the company which is when the employee, through the trust, essentially sells shares back to the company or the ESOP for a value determined by an outside appraiser.

Exhibit 1: Non-leveraged ESOP Diagram



The biggest downside of the NLE is that, in most cases, transferring ownership in such a way can be a lengthy process because the funds available within the company are limited, and thus may only allow small percentages of the shares to be transferred annually. In certain situations, the value of a company may increase while a NLE transaction rolls forward, even if the company is not gaining in profitability. This might stretch the time to move to 100% employee ownership to an even longer period. Alternatively, a company might issue new shares and gift them to an ESOP to dilute the sellers interest; however, in most cases where this happens the volume of shares issued are limited as to lift ESOP ownership above specific thresholds, for example, from 25% to above 30% to qualify for tax deferral under Section 1042 (only in closely held C corporations)[[16]](#footnote-16).

*Leveraged ESOP (LE):*

Broadly speaking, LEs tend to be more complicated than NLEs. Leverage or debt financing is the key mechanism that allows the ESOP to buy shares the same way any other investor would buy them – by levering the future earnings of the company to pay for it. The advantage to the owners is mainly that it enables them to sell a larger volume of shares, or stake in the company to the ESOP in one single transaction as would not be possible in NLEs because of the limited funding.

Exhibit 2 illustrates the basic mechanism. The leveraged ESOP (LE) is “leveraged” because it is financed by an external loan from a third party provider (banks or alternative lending sources[[17]](#footnote-17)) or through a seller loan. In either case, the loan is often guaranteed by the company and/or the seller. The company usually loans the same amount to the ESOP which enables the ESOP to purchase a pre-determined (by the value of the loan) number of shares from the current owners. The internal loan is amortized (or repaid) by the ESOP as dividends paid on the company stock are tax deductible if used to repay principle debt or interest. The company often uses the money saved through tax advantages to repay loans over a shorter number of years than would have otherwise been contemplated. In practice, the internal and external loan repayment schedules do not need to be same.

The amount of stock transferred is likely to be larger than the amount transferred in NLEs because debt financing makes larger deals possible. The price of the shares is determined by an independent valuator, and not by the owner of the stock. Moreover, the seller may have to pledge some or all of the proceeds of the transaction to the third party lender as collateral for a period of time. Employees receive share allocations each year as the loan is repaid.

Exhibit 2: Leveraged ESOP Diagram



Still, although leveraged ESOPs speed up the process of transferring ownership to employees, it remains unlikely that even with external funding, 100% of ownership may be transferred in a one-off transaction, but when this happens, it usually takes a combination of external financing and subordinated seller notes[[18]](#footnote-18). However, doing so may result in overleveraging which may have a negative impact on future company performance because debt repayments are financed through the reallocation of the operating cash flow from productive uses such as investments.

Sometimes, owners and ESOP participants are happy with a minority, for example 30%, stake in the company being transferred to employees. Still, as suggested earlier, since 30-40 per cent of ESOPs are or will eventually own 100% of the company, we need to focus on the mechanisms that allow this and that are regularly used to increase employee ownership in multiple stages.

**Add-on ESOP Transactions**

Indeed, multi-stage ESOP transactions are a common type of ESOP deal because of the limitations of both leveraged and non-leveraged ESOPs. Because it usually requires multiple tranches of ESOP transactions to take a company to 100% employee ownership, ESOP transactions are seldom as straightforward as suggested by the frequently used neat diagrams representing the mechanism (as we did in this chapter). Instead, ESOP transactions become, usually, more complex with each transaction that is added to the process of a multi-stage ESOP. Some of these issues are discussed in sections below.

As outlined, not all ESOP transactions transfer 100% of shares from the current owners to the employees at one time. It is much more common that the initial ESOP only involves the transfer of a minority stake. In smaller firms, the first tranche might transfer up to 50% of ownership to the ESOP, in larger companies, that percentage may be lower. In this light, our discussion will assume that the ESOP holds 30% of company shares after the first stage.

*Outlining a typical series of ESOP transactions*

At the beginning of any negotiation the various parties involved would get together to set out the goals and the steps of the ESOP transaction: seller(s), management, the ESOP trustee and other advisors[[19]](#footnote-19). The ESOP representative(s) would not have been involved in the early stages of the initial transaction negotiation process because, especially if an outside trustee is contemplated, there was no trust to represent at the time that the transaction was first contemplated.

Following the successful completion of the initial ESOP transaction, it would be reasonable to assume that add-on transactions follow the same process, and while they do to some extent, there are some changes to the process and the people involved. The complexities arising in an add-on transaction will be discussed later in the article, so the following discussion really is meant to give an overview of the process and involved parties.

1) Once the goals are clearly understood by the parties, for example raising ESOP ownership from a minority to a majority stake, sellers would outline their objectives, as well as some initial terms and conditions. The proposal would then be reviewed by the ESOP trust, management and possibly financial advisors.

2) In turn, the ESOP’s financial and legal advisors, and perhaps the trustee would submit proposals to be reviewed by stakeholders to be negotiated and due diligence discussions would be held.

3) The process moves forward with the formal analysis of the particulars of the proposed deal, including firm valuation, terms and conditions, and conditions for the new ESOP holding (in this case 70%). The principal issues at this stage are that the valuation satisfies the sellers, and, most importantly, that the financial viability of the company to service the debt used to purchase stock for the workers is confirmed. Changes in majority ownership will require additional research into new governance procedures to ensure employees are adequately represented (see next section). Moreover, pre- and post-transaction cash flow and shareholder returns will be analysed to outline the feasibility of the transaction and the impact on employee-participants’ share values.

4) A draft company presentation and proposed transaction outline will be handed over, usually by advisors, to the company before being presented to shareholders. Simultaneously, management and, at times, financial advisors, would coordinate lending partners and negotiate consent for funding by the lending institution(s).

5) Selling shareholders and their advisors would respond to the proposed transaction’s terms and conditions and term sheets. Alternatively, when sellers proposed the sale at certain terms, ESOP financial advisors would assess whether these terms are fair to the ESOP. The negotiations are then finalised between the involved parties to the transaction, including the price of the transaction and the terms and conditions of the sale to the ESOP.

6) The last step includes the finalisation of legal documents required for the transaction before the transaction can be closed and funded. In the end, the trustee must be comfortable with the price and the matters that influence price.

*Internal consideration: Changing power relations in negotiating add-on transactions*

Once the initial first stage ESOP transaction has been completed the owner may decide to sell a further stake in the company by repeating the process. Whereas in the initial transaction the owner was the sole decision-maker (and theoretically could impose employee-ownership on the company), an add-on transaction involves both the initial owner and the fiduciary[[20]](#footnote-20) representing the ESOP and its now new and current employee owners to negotiate a deal. This has implications for the parties involved because the board of directors and the ESOP trust have (potentially varying) fiduciary duties to shareholders and ESOP participants, thus requiring them to carefully represent their interests during negotiations and to respect the boundaries between settlor and fiduciary functions.

Effectively, changes in the ESOP ownership percentage can bring about change in control of the ESOP trustee and ultimately the board of directors, potentially influencing the long-term success of the company. In support, the Department of Labor argues that when an ESOP purchases a controlling stake, it must actually gain control within a reasonable period of time[[21]](#footnote-21), limiting control and influence of the initial owners. Moreover, one might want to change ESOP trustees when subsequently completing a change of control ESOP transaction. A trustee to this transaction may require additional qualifications, and must understand what it means to be independent from and able to control the board of directors to ensure decisions are made in the interests of the ESOP participants.

Exhibit 3: Illustrative fair value calculation before and after add-on ESOP transaction



Moreover, the involvement of the ESOP trust at this stage is important because the add-on transaction, financed via debt, lowers the overall value of the firm, thus reducing the value of shares allocated to employees as illustrated in Exhibit 3. While this may have no immediate implications for most employees, employees who are leaving the firm at this point in time will face a decline in the value of shares accrued. Because of this, agreements often (for moral reasons) include provisions called *floor* *price protection* (FPP) to protect those participants from the impact transaction debt may have on the future value of stock[[22]](#footnote-22) and once agreed “this right should not be amendable or forfeitable by the ESOP”[[23]](#footnote-23). However, setting a FPP creates a conflict with the remaining employee owners as they do not benefit from the FPP and instead may prefer exiting employees to be paid less to keep the cash in the company to generate higher company value in the future. Still, while there is some ambiguity as to the law[[24]](#footnote-24), the Department of Labor will usually side with those affected.

Exhibit 4, below, illustrates this dilemma. Assume a company worth $10m with 100,000 shares does an add-on transaction. 10% of the employees are eligible to have their share price protected for three years because they are older. The post transaction value in this example drops by 30% for unprotected shares as a result of debt taken on to finance the deal. In subsequent years the price per share of that stock is forecasted to increase by $7 annually. Shares with FPP however are valued higher and assuming that all eligible employees sell shares just after the transaction is done, the cost would be $30 per share with an overall cost of $300,000 to the ESOP value. Without FPP, the $300,000 would remain with the company and ease the debt load (i.e. through earlier repayment) in which case the share price would recover faster. In this scenario, shares without FPP would reach a value of $105.80 after 4 years, meaning that all remaining employees’ ESOP allocation has increased by 5.8% in value. In case of FPP being implemented, remaining participants would see a reduction in the value of their allocation of $2 in year 4.

Exhibit 4: Simplified example of floor price protection (valid for 3 years) assuming 100,000 shares, repayment rate of $7 p.a. and pre-transaction company value of $10mm



Source: calculation adapted from Burdette et al[[25]](#footnote-25)

*External consideration: Investment bankers’ push for a successful deal*

Moreover, the involvement of external parties, specifically financial advisors becomes more complex. Instead of predominantly having to deal with the concerns of one party (i.e. the initial owner selling part of his or her stake in the company), advisors could now have to advise multiple parties, and crucially, establish communication with all parties involved for the purpose of negotiation. While some of this can be streamlined by having a clear and mutually-beneficial understanding between buyers (ESOP and management) and sellers, the financial implications generally demand the involvement of more outside expertise. More so than in almost any kind of transaction, advisors need to be careful about whom they represent. In cases where parties, for example sellers and management, defer rights to the ESOP advisor, the ESOP advisor would need to have a legal allegiance that is exclusive to the ESOP during the negotiation of the terms of the contract. The employee-owners, in particular, could be represented separately by a lawyer or a union. This following discussion focuses predominantly on the role of investment bankers (or financial advisors) taking account of the market that developed in the US for these types of ESOP transaction specialists.

Unlike investment banks specialising in commercial business mergers and acquisitions, the role of ESOP financial advisors in an (add-on) ESOP transaction is different to the extent that the deal is struck between multiple parties to the business[[26]](#footnote-26). While ownership is transferred from one party to the other in an ESOP transaction, the purchasing party is not external, nor does the selling party necessarily relinquish all ownership rights[[27]](#footnote-27). This means that while both parties are logically interested in cutting the best deal financially, alternative motives come into play; for example, the initial owner may want the company to be set up for a sustainable future instead of maximising the sales value. Equally, the ESOP has fiduciary responsibilities to employees and while this requires them to cut the best deal, the nature of reaching that deal might, again, not involve cut-throat negotiations with the seller, but should be reached on a mutual basis. In fact the price is set by an independent evaluation and thus negotiations are (rightly) limited. In this respect the involvement of the investment banker/financial advisor is partly comparable to that of a *mediator*. Still, financial advisors’ key responsibilities remain: 1) to do the compilation of financial information and 2) to run complicated financial models, for example on the projected future value of the ESOP shares and debt repayment schedules, all within the bounds of coming to a fair price confirmed by an independent valuation.

Investment bankers often negotiate the terms of the loan with potential lenders and select the most suitable lender that will finance the ESOP’s purchase of stock from the selling parties. Because non-ESOP leveraged buyouts of companies and other transactions in the US are frequent, investment bankers are common players in business interactions. While they are not involved in every ESOP transaction in the US, people in other countries that use investment bankers less might dislike the idea of involving investment bankers. However, their involvement is important in a) minimising the costs of the debt repayment and b) pushing the project forward because, unlike lawyers and other advisors who are paid on an hourly basis, investment bankers often only get paid if the transaction is finalised. This often means that they have to invest resources up front without the guarantee of seeing a return on this investment and thus it is in their interest that the add-on ESOP transaction is successful. This is not to say that lawyers and advisors want them to fail because after repeatedly failing to close a deal, their reputations would suffer; however, their compensation is essentially guaranteed and not success-related, thus they could bill many hours without the transaction needing to be finalised.

At the same time, investment bankers cannot propose financing options that are against the interest of the ESOP but would benefit the investment bankers instead. In ESOP transactions, the trustee of the ESOP and management of the ESOP company review the details of the finance solution presented by the investment bankers and makes a decision on whether the deal can go ahead or not. The involvement of the trustee in reviewing the terms and size of the debt finance proposed also ensures that the deal is not overleveraged because that would be against the interest of current and future employee owners[[28]](#footnote-28).

**Conclusion**

We have summarised the complexities arising from initial and add-on ESOP transactions which are much more common practise than suggested elsewhere. Having said this, it was not our intent to dissuade people about ESOP transactions; to the contrary, our aim was to enhance the understanding of the processes and the changing relationship of parties involved.

For sellers of stock to workers through an ESOP, it is important to realise that terms and conditions of an add-on transaction must be aligned with the (financial) interests of the existing ESOP participants represented by a trustee and subject to Department of Labor oversight. Doing so, there need not be any unacceptable financial implications for the seller, because the price is set by an independent agent. Indeed, a seller who understands the requirements can possibly encourage a quick sale and thus limit the costs arising without deterioration in the relationship with the trustee and employee-owners.

Equally, fiduciaries representing employee-owners should understand that it is their legal obligation to have financial and legal experts advising on the transactions. This is not someone taking responsibility who should not be involved; it has merely to do with having experts to examine the legal requirements and provide oversight. Similarly, the fiduciary must ensure that the evaluation on the suitability of the transaction given by the investment banker is proportionate and not over leveraged to minimise any potential adverse effects on the future performance of the now worker-owned firm. Indeed, because they are paid on success, investment bankers have an interest to speed up processes and reach an agreement soon which could reduce lengthy debates with lawyers who are paid by the hour. In ensuring that the best deal is struck with lenders using the expertise of investment bankers, ESOP participants often benefit from lower interest payments and thus an increased value of their share s in the future.

Moreover, the Department of Labor has set up safeguards to ensure that add-on transactions benefit employees and not just the others involved in the process: the level of debt and the impact on short-term firm value must not adversely affect the value of shares for employees, and equally must not overleverage the employee-owned business with debt (as often is seen in private equity-led leveraged buy-outs). This is crucial to maintain the idea behind ESOP transactions to be a benefit to employees by allowing employees to buy companies without having to use their own savings or collateral.

1. ‘A Statistical Profile of Employee Ownership’, 2014, http://www.nceo.org/articles/statistical-profile-employee-ownership [↑](#footnote-ref-1)
2. V Alam, G Brown and D Johanson ‘An Update on Multi–Stage ESOP Transactions’. *Journal of Employee Ownership Law and Finance*, vol. 15, no. 4 (2003): pp. 37-60.

   R Smiley et al. *Employee Stock Ownership Plans: ESOP Planning, Financing, Implementation, Law and Taxation.* (San Diego: Beyster Institute, 2001). [↑](#footnote-ref-2)
3. A notable exception to this is when owners gift their ownership to employees; however, this is a relatively rare event. [↑](#footnote-ref-3)
4. A company where more than 50% of stock is owned by five or less players and tax is payable both at corporate level (on profits) and at the level of those (on dividend income) owning a stake in the company. For the definition of an S corporation, see <http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/S-Corporations> New 2015 legislation before the U.S. Congress would extend the tax benefits of C corporations for owners selling to the workers, to S corporations. On that see, <http://www.esca.us/component/content/article/40-news/2553-big-bipartisan-support-in-senate-for-bill-to-create-more-s-esops> [↑](#footnote-ref-4)
5. S Miller, ‘The ESOP Exit Strategy’, *Journal of Accountancy*, March (2010), http://www.journalofaccountancy.com/issues/2010/mar/20092046.htm [↑](#footnote-ref-5)
6. S Freeman and M Knoll, ‘S Corp ESOP Legislation Benefits and Costs: Public Policy and Tax Analysis’, *Organizational Dynamics Working Paper* 08-07 (2008): pp. 1-15.

   NCEO, ‘How an Employee Stock Ownership Plan (ESOP) Works’, 2014, http://www.nceo.org/articles/esop-employee-stock-ownership-plan [↑](#footnote-ref-6)
7. J Hoffmire, J Willis and R Gilbert, ‘Practice Note: Questions and Answers Regarding ESOPs for Family Businesses’, *Family Business Review*, vol. 2, no. 2 (1992): pp. 173-180. [↑](#footnote-ref-7)
8. Income is taxed in the event of shares being distributed, or sold back to the company at market value, unless employee-owners roll over their ESOP accounts into Individual Retirement Accounts. [↑](#footnote-ref-8)
9. J Blasi, R Freeman and D Kruse, ‘*The Citizen’s Share’* (Yale: Yale University Press, 2015)

   E Kim and P Quimet ‘Employee Capitalism or Corporate Socialism? Broad-based Employee Stock Ownership.’ *Centre for Economic Studies*, CES 09-44 (2009). [↑](#footnote-ref-9)
10. B Kramer, ‘Employee Ownership and Participation Effects on Outcomes in Firms Majority Employee-owned through Employee Stock Ownership Plans in the US’, *Economic and Industrial Democracy*, vol.31, no.4 (2010): pp. 449-476. [↑](#footnote-ref-10)
11. D Kruse et al., ‘Motivating Employee-Owners in ESOP Firms: Human Resource Policies and Company Performance’, *NBER Working Paper No*. 10177, Dec 2003. [↑](#footnote-ref-11)
12. E Field, ‘Money for Nothing and Leverage for Free: The Politics and History of the Leveraged ESOP Tax Subsidy’. *Columbia Law Review*, vol.97, no.3 (1997): pp. 740-785. [↑](#footnote-ref-12)
13. M Blair, D Kruse and J Blasi, ‘Is Employee Ownership an Unstable Form? Or a Stabilizing Force?’, in *Corporation and Human Capital*, edited by T Kochan and M Blair (Washington, DC: The Brookings Institution 2000). [↑](#footnote-ref-13)
14. D Kruse, ‘Research Evidence on Prevalence and Effects of Employee Ownership’, Presented in Testimony before the Subcommittee on Employer-Employee Relations, Committee on Education and the Workforce, U.S. House of Representatives, 13 February 2002. [↑](#footnote-ref-14)
15. The actual timetable is within the 15 months that begin 3 months before the transaction and end 12 months after the transaction [↑](#footnote-ref-15)
16. NCEO, ‘ESOP Tax Incentives and Contribution Limits’, (2014), http://www.nceo.org/articles/esop-tax-incentives-contribution-limits [↑](#footnote-ref-16)
17. Alternative lending sources include for example finance companies, insurance companies, mezzanine debt funds and sellers themselves. [↑](#footnote-ref-17)
18. A seller note is issued by the buyer (the ESOP) bearing the terms of repayments and interest payable to the seller to bridge a funding gap between the purchase price and the financeable asset base of the company to be purchased. [↑](#footnote-ref-18)
19. If the company is unionised, unions may also be involved in the negotiation process. [↑](#footnote-ref-19)
20. The fiduciary is a person that holds assets in trust for another party and manages that asset solely in the interest of that party and not for his or her own profit. [↑](#footnote-ref-20)
21. Alam, Brown and Johanson ‘An Update on Multi-Stage ESOP Transactions’: pp. 40-42 [↑](#footnote-ref-21)
22. J Demetrius et al, ‘Floor Price Protection in ESOP Transactions’, *NCEO Issue Brief*, (NCEO: Oakland, 2012) [↑](#footnote-ref-22)
23. Alam, Brown and Johanson ‘An Update on Multi-Stage ESOP Transactions’: p. 44 [↑](#footnote-ref-23)
24. Alam, Brown and Johanson ‘An Update on Multi-Stage ESOP Transactions’: p. 39. [↑](#footnote-ref-24)
25. D Burdette, J Urbach and J van Heyde, ‘Second Stage ESOP Transactions’ (2013), http://www.esopassociation.org/docs/default-source/new-south-chapter/second-stage-transaction.pdf?sfvrsn=0 [↑](#footnote-ref-25)
26. J Hoffmire,’ Practitioner Conduct: The Need for Open Debate’, *The Journal of Employee Ownership Law and Finance*, vol.2, no.2 (1990). [↑](#footnote-ref-26)
27. Even in add-on transaction, the initial owner(s) may still hold the majority stake within the company [↑](#footnote-ref-27)
28. The Department of Labor might equally object to overleveraging because of its impact on the value of the ESOP as a pensionable plan. [↑](#footnote-ref-28)