Understanding ESOPs: Training to be an ESOP Professional

Meeting Time: Wednesdays, 5PM-8PM PST, except Mondays on April 25th and May 2nd

Lead instructor:
- Kim Blaugher
  kblaugher@ucsd.edu

COURSE OVERVIEW
The growing field of employee stock ownership plans represents an attractive career opportunity for young, professional business advisors. And, as experienced professional advisors of the “baby boom” generation are retiring, professional firms are in hiring mode. Therefore, there is both an opportunity and a need for new, well-qualified professionals to enter the field.

A challenge, however, is that there have been few effective learning venues in the ESOP field – few places that young professionals can go to gain the knowledge and expertise that are needed in order to practice successfully. Most of the professional firms in the ESOP field - whether trustees, law firms, sell-side advisors, investment bankers, valuation firms or others - are small "boutique" firms. As such, they typically have a very limited capacity to train new employees. This conundrum serves neither the firms that are looking for trained employees nor the (generally young) people who are interested in pursuing a career in the ESOP field.

This course is intended to address this training gap that now frustrates both employers and employees in the ESOP professional fields. Our aim is to prepare individuals to serve successfully as professionals in the ESOP field. Because the course is aimed at professionals in a wide variety of specialized fields, it is necessarily an “ESOP fundamentals” class. As such, it would be expected that follow-on training in a preferred area of specialization (such as financing, sell-side advising, administration, fiduciary service, etc.) will thereafter be pursued in order to qualify an individual as fully trained professional in the specialized field.

PREREQUISITES
Presented by the University of California San Diego’s Rady School of Management, this course is designed as a graduate-level program. Thus, while the course does not require substantial expertise in ESOPs in order to enroll, an appropriate level of education and expertise in business matters will be necessary. Specifically, enrollment will require that the student have a four-year college degree, with at least three years of work experience (in an area such as banking, finance, accounting, law, human resources, etc.) and/or
specialized training (e.g. a degree in business, finance, accounting, law, etc.) that provides the student with a solid background in business fundamentals.

**INSTRUCTION MEDIA**
Canvas will be used as the main source for course information, assignments, and grades. Classes will be delivered online in live, real time. Lectures will be recorded and uploaded to Canvas each week.

**APPROACH TO LEARNING**
The learning process in this class will feature the following elements:

- **Readings.** The readings for the class consist of a collection of articles and original statutory source materials, which will be assigned and provided by the presenters and instructors. The assigned readings for each class session will serve as a basis for classroom discussion (thus the readings associated with a given class session should be read *before* that class session).

- **Online presentations from expert practitioners.** Class lectures by practicing subject matter experts will complement the assigned readings to provide concepts and information relating to best practices in the ESOP field.

- **Class discussion and group exercises.** Class meetings will include case studies and problem challenges for students to address in group discussions. These instructional methods are intended to provide students with an opportunity to learn and apply concepts and information relating to best practices in the ESOP field.

**COURSE ASSIGNMENTS**

- **Assigned Readings:** Assigned readings are to be completed prior to each class meeting.

- **Short Assignments:** Assignments will consist of worksheets, discussion posts, and video summaries due each week before class.

- **Participation in Discussion:** Student participation in class discussion will be a critical part of our learning process. At each class session, the value of each student’s contribution to the discussion will be recorded.

- **Post-Class Quizzes:** After each class session, a short quiz covering the information covered in the class will be administered.

- **Final Exam:** At the end of the term, a 90-minute final examination will be administered.

**GRADING**
The course will be offered on a pass-fail basis. In order to pass, you will need to receive a 65%. Points will be earned based on the extent to which you demonstrate, through the assignments described above, that you have gained an understanding of the concepts and practices that will be presented in the course. Specifically, your performance in the assignments will be weighted as follows:

<table>
<thead>
<tr>
<th>Assignment</th>
<th>Weight</th>
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<tbody>
<tr>
<td>Class participation and assignments</td>
<td>50%</td>
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<tr>
<td>Post-Class Quizzes</td>
<td>20%</td>
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<tr>
<td>Final Exam</td>
<td>30%</td>
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ACADEMIC INTEGRITY
Integrity of scholarship is essential for an academic community. As part of the Rady School, we pledge ourselves to uphold the highest ethical standards. The University expects that both faculty and students will honor this principle and in so doing protect the validity of University intellectual work. For students, this means that all academic work will be done by the individual to whom it is assigned, without unauthorized aid of any kind. The complete UCSD Policy on Integrity of Scholarship can be viewed at: [https://senate.ucsd.edu/Operating-Procedures/Senate-Manual/appendices/2](https://senate.ucsd.edu/Operating-Procedures/Senate-Manual/appendices/2)

STUDENTS WITH DISABILITIES
A student who has a disability or special need and requires an accommodation in order to have equal access to the course must register with the Office for Students with Disabilities (OSD). The OSD will determine what accommodations may be made and provide the necessary documentation to present to the faculty member.

The student must present the OSD letter of certification and OSD accommodation recommendation to the faculty member in order to initiate the request for accommodation in classes, examinations, or other academic program activities. No accommodations can be implemented retroactively. For further information please visit the OSD website or contact the Office for Students with Disabilities at 858-534-4382 or [osd@ucsd.edu](mailto:osd@ucsd.edu).
### Overview

**March 30**

**Unit 1: Introduction to ESOPs: History and purpose**

- a. Welcome and introductions: Let’s all get acquainted. Review of course.
- b. What is an ESOP?
  - i. A “qualified plan.” How is it different from other qualified plans?
  - ii. ESOP history: how it came to be
    1. The drive for pension reform. Russell Long meets Louis Kelso
    2. ESOPs “…serve as an incentive for corporations to structure the financing in such a way that employees can gain an ownership stake in the company for which they work.”
  - iii. History of ERISA
- c. Why do ESOPs matter?
  - i. Changes the whole socio-economic system
    1. Are employee owned companies catalysts for societal change?
    2. Companies should provide benefits to all stakeholders, not just to shareholders
    3. Provides, better, more meaningful lives for employee-owners
  - ii. Generates superior productivity and performance for companies
  - iii. Continuation of legacy and culture
- d. The consultants responsibility in fostering the employee ownership movement in
  - i. ESOP transactions
  - ii. Organizational development
  - iii. Ongoing administration/operation of ESOP and ESOP companies

**Presenters: Corey Rosen (National Center for Employee Ownership)**

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**April 6**

**Unit 2: The world of ERISA and Internal Revenue Code**

- a. Title I: the fiduciary provisions (DOL); prohibited transactions, parties in interest, etc.
- b. Title II: the tax code provisions (IRS) special income tax incentives including deductibility of acquisition value, 1042 rollover, S corporation and participant tax deferral

**Presenter: Greg Brown (Polsinelli)**
<table>
<thead>
<tr>
<th>Transactions</th>
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<tr>
<td><strong>April 13</strong></td>
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<tr>
<td>Unit 3: Issues that need to be addressed in M&amp;A transactions including ESOPs</td>
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<tr>
<td>a. Available ownership transition options</td>
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<td>b. The world of M&amp;A transactions and how ESOPs are different</td>
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<td>c. The available sources of financing</td>
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<td>d. Warrants, earn-outs, escrows, etc.</td>
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<td>e. Income tax issues</td>
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<td>f. The emotional issues, loss of control, continuation in company and board position</td>
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<td><strong>Presenter:</strong> Ted Margarit (Chartwell Financial Advisors, Inc.)</td>
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<td><strong>April 20</strong></td>
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<td>Unit 4: The buyer as a qualified retirement plan</td>
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<td>a. Creating the buyer: Designing the plan and drafting the plan doc</td>
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<td>b. ERISA design constraints: participation; vesting; allocation; etc.</td>
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<td>c. Appointing the Trustee</td>
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<td>d. The ERISA constraints on the buyer: Price; terms; and process</td>
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<td><strong>Presenter:</strong> Lynn DuBois (The ESOP Law Group)</td>
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<td><strong>April 25, Monday</strong></td>
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<td>Unit 5: Planning a transaction: “Feasibility” analysis</td>
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<tr>
<td>a. Objectives</td>
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<td>b. Methods</td>
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<td>c. Issues to be addressed: cash flow; profitability; HCE rules; annual contributions limits; state law restrictions on ownership; 409(p), 1042</td>
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<td>d. Overview of ESOP accounting rules</td>
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<td>e. Deliverables</td>
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<td><strong>Presenter:</strong> Kim Blaugher &amp; Mauro Canelo and Tina Xu (Beyster Institute)</td>
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<td><strong>May 2, Monday</strong></td>
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<td>Unit 6: Fair Market Value</td>
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<td>a. What are the trustee’s obligations vis a vis fair market value?</td>
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<td>b. The art and science of valuation: the appraisal process</td>
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<td>c. IRS and DOL positions</td>
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<td>d. Court cases rulings</td>
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<td><strong>Presenter:</strong> Chris Kramer (Strategic Equity Group)</td>
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May 11
Unit 7: Shareholder estate planning including reinvestment of sale proceeds
   a. Section 1042, installment sale reporting, warrants and clawbacks/earnouts
   b. Alternatives for investing proceeds from sale
   c. Estate planning and other wealth transfer issues
   d. Charitable gifting
Presenter: Bruce Bickley (1042 Consulting LLC)

May 18
Unit 8: Equity compensation arrangements
   a) The role of equity compensation at ESOP companies
      i) Executive compensation
      ii) Broad-based employee ownership
   b) Types of equity compensation
   c) Income tax, employment tax and ERISA issues
   d) Securities laws: SEC and state “blue sky” regulations
   e) Impact on valuation
Presenter: Matt Keene (Chartwell Financial Advisors, Inc.)

May 25
Unit 9: Transaction structure and tax issues
   a. Leveraged or non-leveraged
   b. How much the seller will sell
   c. ESOP purchase vs. company redemption
   d. Inside/outside loan structures
   e. Compensation levels for executives
   f. Income tax issues
Presenter: Phil Carstens (Foster Garvey)

June 1
Unit 10: The transaction process
   a. Hiring the players: the buy-side team; the sell-side team
   b. Managing the transaction with timelines and checklists
   c. The buyer’s due diligence
   d. Negotiating the deal
   e. The seller’s and buyer’s objectives and concerns
   f. The stock purchase contract
      i. Price and financing terms
      ii. Employment agreements
      iii. Representations and warranties
      iv. Earn-out/claw-back/escrow provisions
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<tr>
<th>Presenter: Bob Grossman (Polsinelli)</th>
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<td><strong>Living with an ESOP Post-Transaction</strong></td>
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**June 8**  
Unit 11: Life as an ESOP Company – Working with the ESOP team  
   a. Company financial statements, review/audited  
   b. ESOP trust’s audit  
   c. Annual valuation update  
   d. ESOP repurchase liability and ESOP sustainability  

**Presenter: Renee Lewis (Holland & Knight)**

**June 15**  
Unit 12: Plan administration: Legal requirements  
   a. Plan qualification requirements  
   b. ERISA fiduciary responsibilities  
   c. ESOP plan document  
   d. Legal documents impacting the ESOP recordkeeping such as ESOP inside loan

**Presenter: Karen Ng (Nixon Peabody, LLP)**

**June 22**  
Unit 13: Plan administration: Recordkeeping Issues  
   a. The role of the TPA  
   b. Annual recordkeeping issues including eligibility, compensation, participant allocations and distributions  
   c. Compliance testing

**Presenter: Barbara Clough (Crowe)**

**June 29**  
Unit 14: Corporate governance: Who runs an ESOP company?  
   a. The governance collaboration  
   b. Role of the Trustee  
   c. Role of the Board of Directors  
   d. Role of management  
   e. A collaborative effort by the three parties

**Presenter: Howard Kaplan (Kaplan Fiduciary)**

**July 6**  
Unit 15: Organizational Development and ownership culture-building  
   a. Educating the employee-owner  
   b. Creating a high-performing team of co-owners  
      i. Open book management
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<tr>
<th><strong>Presenter: Jennifer Briggs</strong></th>
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<tr>
<td><strong>Final Exam take home test due by July 13th</strong></td>
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<tr>
<td><strong>April 22nd In-person meeting at the NCEO conference in Seattle</strong></td>
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<td><em>Not a course requirement, participation in the NCEO meeting does not affect grades.</em></td>
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