

ISSUES + UPDATES

3RD QUARTER 2025

Two Bills, One Big Step for ESOPs

In a powerful bipartisan moment for worker-ownership advocates, the **U.S. Senate Health, Education, Labor & Pensions (HELP) Committee** voted **unanimously** on July 31 to advance two major bills promoting and protecting **Employee Stock Ownership Plans (ESOPs)**: the **Retire Through Ownership Act (S. 2403)** and the **Employee Ownership Representation Act (S. 1728)**.

S.2403 provides long-sought clarity on adequate consideration by providing guidance on how to determine fair market value for a company transitioning to an ESOP based on longstanding principles. It establishes that ESOP fiduciaries may rely in good faith on independent appraisals prepared according to the well-established standards of IRS Revenue Ruling 56-60. This will alleviate years of uncertainty that left ESOP transactions vulnerable to DOL investigations and private litigation, even when companies acted prudently.

S.1728 addresses the absence of employee ownership voices in executive branch rule making. It expands the ERISA Advisory Council to include two representatives from the employee ownership community, ensuring that the perspectives of the 14 million Americans affected by employee ownership are heard when the DOL is deciding on retirement policies.

Together, these bills represent a historic shift in how the federal government regulates, supports, and legitimizes employee ownership as a cornerstone of retirement security and wealth building in the U.S.

Valuing Bitcoin

Calling Bitcoin a “currency for the paranoid” and comparing corporate crypto buying to “replacing shock absorbers with pogo sticks,” Professor Aswath Damodaran (New York University Stern School of Business) addresses the topic in a recent

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VMI Highlights:

Value Management Inc. was the proud Gold Sponsor of the ESOP Association Multi State conference held in September in Wilkes Barre, PA. In addition to sponsoring, Ed Wilusz, Greg Kniessel and Susan Wilusz led various sessions over the course of the 2-day conference.

Andrew Wilusz helped kick off the year for the Bucks County Estate Planning Council. He was a part of the panel discussion “Beyond the Sale – Strategic Exit Planning for Business Owners.”

Kaitlin Wilusz is speaking at the ESOP Association’s Employee Owned 2025 in Las Vegas, NV. Her session will discuss “Pain Points of an ESOP Transaction.” Greg Kniessel will also be speaking at Employee Owned about “ESOP Valuation in Uncertain Times.”

Congratulations to Brandon Nelson on his recent promotion to Manager. Well deserved!

M&A Reference Guide For Selling a Business

10 Steps to Selling Your Business

1. Explore Options

- Even if you're not thinking about selling now, it's never too early to consider business succession/ continuation planning.

2. Assess Condition and Value of Business Offering

- It's important to define what you are selling and to understand early in the process what you should reasonably expect in return. An investment banker can help you understand what you have to offer and what you are likely to receive in return for it.

3. Hire Investment Banker and Identify Deal Team

- The investment banker will run the deal, which involves creating and executing a plan to sell the business, while coordinating activities with the deal team.

4. Cooperate with Investment Banker and Deal Team

- After hiring an investment banker, it is important to let them do their job by facilitating the data gathering process.

5. Business as Usual

- Operate the business as usual. Resist the urge to tell people until the time is right. If there is a grey area involving a big money decision, discuss it with the deal team.

6. Contact Buyers

- After the company's data is gathered and prepared for presentation to buyers, the investment banker contacts buyers to identify interest and to solicit bids.

7. Negotiate with Buyer(s)

- M&A insiders know that negotiations involve much more than agreeing on a price: negotiations begin with the first contact between buyer and seller, and they can continue until the deal closes (and sometimes beyond!).

8. Facilitate Buyer Due Diligence

- Buyers typically seek a period of exclusivity

lasting 60 to 90 days during which time they request and scrutinize detailed information on virtually all aspects of the seller's business, including: financial performance & accounting, taxes, customers, products, services, management & employees, facilities & environmental, machinery & equipment, information technology, human resources, insurance, and legal matters.

9. Draft Purchase Agreement(s)

- Purchase agreements set forth the final terms of the transaction(s) and bind the parties to those terms.

10. The Closing!

- The "Closing," which typically comes on the last day of due diligence, refers to finalizing the deal by the parties executing or signing the purchase agreement(s). For sellers, one of the most exciting parts of the Closing is that when the deal is done, the funds are released!

Questions for Business Owners Thinking About Selling

GOOD QUESTIONS:

1. How much is the business worth/is this a good price/how much will this cost?
2. How long will it take to find a buyer and sell it/ are these the right buyers?
3. How will the sale be kept confidential?
4. What will happen to my people?
5. Do I still have to work, and if so, for how long?

BETTER QUESTIONS:

1. How do I know if it's a good time to sell/am I ready, is the business ready, how does the market look for a business like this?
2. What should I say if someone asks me if my business is for sale?
3. What planning should be done to prepare for a sale/what are the different facets of transition planning that I should be considering?
4. How much will buyers likely pay for my business, how and when will it be paid, and what will be the estimated net proceeds from

the sale?

5. Will I be able to continue operating business as usual during the process of selling it?

Hidden Hazards of Selling a Business

Irrational Exuberance – Most business owners would benefit from being realistic about what they have and what they can expect from a sale (for example: state of the business, value to be realized, timing of the sale, time needed to prepare & to sell, efforts required to run the business while trying to satisfy buyers, etc.) If they are both in tune with market pricing, seller's and buyer's price ranges should have an overlap. It helps to know what a good deal looks like if you want to get a great deal!

Underestimating the Value of Expert Advice – Minimizing or avoiding professional fees rarely yields a better return to the seller. Transactions are complicated and involve much more than a seemingly attractive number offered by a professional buyer to an emotional seller. M&A advisors can help keep emotions in check and will work with legal and other advisors to clarify the issues, maximize returns, minimize risk, and close a better deal.

House Not in Order – *Delegation of duties* – it is critical to know who currently does what and who will be needed to run the business. Hence, it is essential to have an accurate assessment of the owner's and managers' roles in daily operations. *Financial systems & reporting* - the ability to present and explain actual and adjusted financial performance to buyers is mandatory. Relevant financial systems and information should be reviewed and verified prior to presentation to potential buyers.

No Time for Timing – In real estate, it's location, location, location; when selling a business, it's timing, timing, timing! You may not like it, but you can't ignore it. Be aware of relevant timing issues; if now is not the right time, figure out when will be the optimal time for a sale.

Data Dump - Owners generally find buyer information requests tedious and intrusive – and they are! Buyer requests are comprehensive and include data that owners rarely show to anyone (let alone to actual or possible competitors). The

sensitivity of company data should be considered when preparing it for presentation to buyers. Controlling buyer access to company data will help protect the company's proprietary information and the owner's interests.

When is the Right Time to Sell the Business?

Timing can be critical to successfully selling a business. Raising questions about when to sell and understanding the issues early in the process are key to developing a successful sale strategy.

1. Is it the right time for the business owners to sell?
2. Is it a good time for the company to be sold?
3. Are there any noteworthy timing issues in the company's industry or market?
4. Are there qualified buyers interested in the company when it is ready to be sold?
5. Is the timing right in the economy to support the desired transaction?
6. Considering that the sale process can take 8 to 18 months to complete, is there time to get the deal done?

The answers to these questions are found in an assessment and an understanding of the circumstances specific to the situation at hand. The key to optimizing timing in a business sale is to start a conversation with professionals about selling the business well in advance of the sale.

How to Increase Business Value & Attract Buyers

1. **Track value.** Establishing an initial range of pricing is a key early step to successfully selling a business and/or making plans to increase value. Identifying the key components to your value will help you track progress.
2. **Increase revenue.** Companies with higher revenue levels can qualify for pricing multiples not available for smaller businesses. While it's not the norm, some businesses are even priced based on revenue.
3. **Diversify revenue sources.** Diversity of revenue streams can increase value and enhance appeal. It could be the number of clients or offering

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different services or products. In general, diversification of revenue sources helps reduce risk. Reducing risk increases value.

4. **Increase profits and/or profitability.** Cash flow is often king when it comes to value. Higher profit (more earnings) and higher profit margin (higher percentage of earnings-to-sales) businesses attract higher pricing multiples.
5. **Reduce/eliminate less profitable work.** Reviewing and comparing services and offerings for overall contributions to value can help identify better or worse areas. Cleaning up accounts is viewed favorably by buyers and promotes increased value.
6. **Reduce expenses.** Eliminating waste or excess reflects good stewardship. Addressing owner-related expenses will need to be done eventually. Sustainable expense reductions can add directly to the bottom line and increase value.
7. **Reduce key person dependence and strengthen management.** Next generation leaders need to be identified and prepared. Managerial depth and operational redundancies ensure that business can continue smoothly should something happen to key people.
8. **Document operational procedures and responsibilities.** There is typically not a single, comprehensive “operator’s manual” for a business. From documenting how and how often machine maintenance occurs to the responsibilities of personnel, the more a business is documented the more attractive it will be to buyers. Increased documentation can lead to increased value.
9. **Upgrade financial statements.** Timely filed and accurate tax returns are expected. Buyers typically look for income statements, balance sheets and cash flow statements prepared at a level commensurate to the business’ operations, complexity and size. Enhanced reporting gives the buyer higher confidence in what is reported. This helps reduce risk and increase value.
10. **Engage professionals.** Seeking professional assistance can help to identify specific areas that impact value and appeal to buyers. Engaging a seasoned M&A expert can help

owners understand what they reasonably have (and what it’s reasonably worth) and how and how long it will take to achieve owners’ goals. An experienced M&A pro can help the seller realize its objectives and maximize value.

Typical Components of M&A Fees

- **Retainer/Upfront Work Fee**
 - o 90% of advisors charge a “work” fee payable regardless of closing a deal.
 - o Monthly retainers of \$5,000 - \$10,000+ are common.
- **Success Fee**
 - o The main fee payable for M&A services is a contingent fee based on a percentage (typically 1% to 10%) of the value of a successfully consummated deal.
 - o Success fees are structured as a scaled percentage or a flat percentage.
- **Minimum Success Fee**
 - o A pre-determined, minimum success fee is common on larger deals.
- **Breakup Fee**
 - o More than a third of providers charge a breakup fee if a client does not proceed with a predetermined bona fide offer.
- **Reduce Success Fee by Retainer/Work Fee**
 - o Most providers will deduct work fees from success fees payable.
- **Timing of Success Fee Payments**
 - o Most providers expect full payment at closing, regardless of when purchase price components are payable.
- **Expense Reimbursement**
 - o Most providers expect reimbursement of out-of-pocket expenses; common reimbursable expenses are for travel and virtual data rooms.



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article. While his tone may sound provocative, the content of his analysis aligns with mainstream valuation thought, i.e., that only assets that generate cash flows can be valued using intrinsic methods.

Price vs. value: For determining the fair market value of Bitcoin—whether for a divorce, estate, or corporate holding—Professor Damodaran’s article provides several important takeaways. His central argument is that Bitcoin cannot be valued in the traditional sense because it does not generate cash flows. Instead, it must be priced based on supply and demand dynamics, perception, momentum, and mood. He categorizes Bitcoin as either a currency (albeit an inefficient one) or a collectible, like gold or art, and concludes that belief systems and speculation drive its valuation more than intrinsic metrics. This has critical implications for valuation professionals: Bitcoin pricing is inherently unstable, and traditional valuation methods (like DCF or multiples) are inapplicable.

For practical valuation contexts, Damodaran’s framework implies that market price is the only defensible measure of value. That said, it should be pointed out that this price is volatile, sentiment-driven, and lacks a fundamental anchor.

Valuation Dispute Hinges on GAAP vs. Legal Claims in M&A Deal

A case in Delaware Chancery Court reinforces the importance of understanding both GAAP-based accounting frameworks and contractual limitations when serving as an expert in M&A-related valuation disputes.

Limits to authority: The court upheld the expert’s use of GAAP (specifically ASC 606) to classify \$22 million in customer payments as deferred revenue, reducing the purchase price. However, the court vacated the expert’s decisions on other disputed items that involved legal claims over representations and warranties—issues that had to be handled through the indemnification provisions of the stock purchase agreement (SPA), not the purchase price adjustment process.

This case highlights the importance of clearly drafted SPA provisions and reinforces that valuation experts must distinguish between accounting-

based adjustments and legal indemnity claims when advising clients or acting as neutral experts in M&A disputes.

The case is *N. Data AG v. Riot Platforms, Inc.*, 2025 Del. Ch. LEXIS 129; 2025 LX 124902; 2025 WL 1661855.

Valuing Startups in Today’s Environment

Valuing startups has always been challenging, but according to a recent podcast today’s environment of slower venture funding, higher interest rates, and greater market volatility makes it even more so. Analysts can no longer rely on smooth stage progression or optimistic forecasts. Instead, they must put more weight on cost-based indicators, calibration of fewer and sometimes distressed transactions, and broad ranges of venture capital return benchmarks. Above all, they must recognize that the qualitative story—the founder’s vision, ability to pivot, and market positioning—carries greater weight than ever.

The Test for Fairness (According to the Delaware Supreme Court)

In *Jacobs v. Akademos, Inc.*, 2025 Del. LEXIS 271; 2025 LX 229561; 2025 WL 1924348 (July 14, 2025), a shareholder dissent/oppression case, the Delaware Supreme Court held that “the test for fairness is not a bifurcated one as between fair dealing and price. All aspects of the issue must be examined as a whole since the question is one of entire fairness.” Sometimes, a fair price was the most important showing. Fair dealing had value to demonstrate the fairness of the price obtained. The paramount consideration was whether the price was a fair one. To say it another way, fair dealing was a co-dependent variable to the independent variable of a fair price.

Determining Earnouts

In *Shareholder Representative Services LLC v. Alexion Pharmaceuticals, Inc.*, 2025 Del. Ch. LEXIS 148; 2025 LX 180134 (June 11, 2025), the court found that Alexion breached its obligations by prematurely terminating development of a drug tied to milestone-based earnout payments, likely to benefit its parent



company, AstraZeneca. Applying Delaware law, the court used an “expected value” approach to calculate damages—assessing the probability that each milestone would have been met if Alexion had used commercially reasonable efforts.

Investing in Reputation

A recent study reported in the *Journal of Applied Business and Economics* shows that corporate reputation, as measured by the Harris Poll Reputation Quotient, can be a useful and practical tool in forming investment portfolios—particularly concentrated, equally weighted ones. Portfolios of firms with “very good” reputations consistently outperformed traditional benchmarks like the S&P 500 in terms of both return and risk, including during the COVID-19 downturn. For valuation professionals, the findings support the integration of intangible, nonfinancial

factors into portfolio analysis and suggest that such qualitative screens can enhance performance while managing downside risk.

Court Rejects Damages Models in Smear Campaign Case

A recent case involving BDO USA suing a rival firm for running a smear campaign on social media saw the court awarding damages for mitigation costs but rejecting BDO’s claims for reputational harm. The BDO expert failed because they offered no hard evidence tying the smear campaign to real-world consequences for BDO’s business. The court thus declined to award any reputational damages, granting only BDO’s mitigation costs (trebled under statute). The case is *BDO USA, P.C. v. JSCo Enters., Inc.*, 2025 Del.Super. LEXIS 402.

If your firm is interested in having VMI give a presentation on business valuations and/or mergers & acquisitions, please contact Susan Wilusz at smw@valuemanagementinc.com.

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