

# National Center for Employee Ownership

<https://www.nceo.org/covid-ga>

## COVID-19 Questions and Answers

*A frequently updated overview on employee ownership and the coronavirus outbreak.*

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We will continually update this page as we gather more information and answers. The NCEO is conducting a one-item questionnaire, and you can read a summary and pose your own questions for us on the [NCEO COVID-19 Survey Responses](#) post. Please also visit [COVID-19 Resources for Your Business](#), our main entry point the NCEO's coronavirus support.

[Excerpt]

### **Q Should (or can) an ESOP get an interim valuation and, if so, how is it done and how quickly?**

**A.** First, there is the legal question. We asked a number of experts about this, and they agreed that this may not only be possible, but required because the valuation may be outdated. As in any of these decisions, it is important to talk to your ESOP counsel and trustee. If you do decide to have an interim valuation, the board of directors should amend the plan document to allow for an interim valuation to be done by the trustee-post year end to be used for benefit payments (unless the plan already provides this). The timing of this event, nearing midway in 2020, may make the case easier.

Say, for instance, that your plan provides that you will be paying people out in 2020 based on the most recent year-end valuation. That price is now almost certainly significantly too high. If you pay them out at a lower price, they might argue that you are taking away a benefit they deserve, but the trustee is responsible for maximizing plan assets for all participants, and a large payout at an unreasonable price would hurt everyone else. So a good argument can be made that you have to do this, but, as always, this is a facts and circumstances decision.

**We asked Patrice Rodogna of Marcum LLP, a specialist in ESOP appraisal work, to provide more details on how this might be assessed and performed. Her answer follows.**

As of mid-March, business appraisers, along with the Trustees of ESOPs are working diligently to determine the value of the sponsor stock held by the ESOP as of December 31, 2019, the date that the updated valuation is to be performed in almost all ESOP Plan (the "Plan") documents.

Due to the extreme changes in market conditions so soon after the typical Dec. 31st annual update for ESOPs *and* prior to the date when many eligible ESOP plan participants have yet to receive their distributions (which should be recognized as unique as compared to the last economic melt-down in 2008, when it occurred *after* many of the distributions in calendar-year 2008 had occurred), many are questioning if there should be an interim valuation directed by the trustee for the benefit of the terminated ESOP beneficiaries. A trustee would typically look at the ESOP plan document to see if an interim

valuation is permitted. Whether it is, or not, a trustee needs to use judgment as to whether or not the current circumstances warrant an updated valuation and if that is in the best interest of all Plan participants. From a business appraiser's perspective, if assumptions underlying any of the methodologies employed to determine value change significantly, then a valuation opinion as of a prior date may not be suitable for a current use. Some of the key factors that the COVID-19 virus is creating that uncertainty around include: future revenue orders, supplier risks, customer risks and overall market risk factors and market multiples of public guideline companies. To the extent that COVID-19 would materially impact the valuation, then the guidance for any fair market value valuation would suggest that the valuation needs to be updated.

Regarding logistics, the valuation firm could easily update the current work that they are doing for the December 31, 2019 valuation date, and incorporate any changed factors as of an interim valuation date. While there is no "right answer" for when that valuation date would be, it would make sense to document the rationale for picking an appropriate valuation date, that at least contemplates a new threat (COVID-19) in the business world that was simply not known (for U.S. companies) as of December 31, 2019. Once the appraisal firm has the updated valuation date, they will most likely re-engage with management to understand the current operating risks facing their company, obtain updated financial statements and forecasts, and obtain economic, industry and market data as of the new interim valuation date. The valuation firm will incorporate all of this data in order to prepare a more current valuation, reflecting current conditions prior to any 2020 calendar-year distributions (assuming none have occurred as of a current date/end of March 2020).