



SPINNAKER

~~~~~ TRUST ~~~~~

INDEPENDENT ESOP TRUSTEE

**SARGENT**

100% EMPLOYEE-OWNED

# CHALLENGES OF MATURE ESOPS: THE ROLE AND VALUE OF ESOP ADVISORS

September 26, 2022



# Spinnaker Trust is

A team of over 40 professionals, highly experienced in providing comprehensive wealth management services to families.

Differentiated by the **integrity** of our investment advice, the **quality** of our trust, estate and planning advice, and our deeply embedded **commitment** to client service.

Serving over 350 wealth management clients and over 50 ESOP clients with total assets of \$2.5 billion.

Principally owned by our most senior executives and an **Employee Stock Ownership Plan**.

A state regulated **Maine bank**, chartered as a non-depository trust company founded in 2001.

## OUR SERVICES

Investment Management

Financial Planning

Trustee Services

ESOP Trustee Services

# Sargent is



Sargent is a family of hundreds of employee-owners building infrastructure from wind farms to landfill cells in the Northeast US and Mid-Atlantic region.

We're proud of our rich, century-long history of building lasting infrastructure, but we're not slowing down -- not now, not ever. We've never been more energized as we focus on preparing the next generation to lead us into our second century.

## OUR SERVICES

Airports

Highway + Roadwork

Landfill

Renewable Energy

Site Development

Municipality + Utility

Alternate Procurement

Hot Mix Asphalt +  
Aggregates

Fabrication + Mechanical



# *Agenda*

- Who are the advisors and what do they do
  - Board of Directors
  - Trustee
  - Valuation Advisor
  - ESOP Lawyer
  - Third Party Administrator (TPA)
  - CPA
- Case Study: Sargent's evolution from all wearing multiple hats to gaining separation of duties and finding the right advisors
- How do you know if you have the right team
- Thoughts and Questions from audience

## WHAT ADVISORS DO YOU NEED TO ADMINISTER YOUR ESOP?

### *The On-Going ESOP Team*

- Board of Directors - governing body elected by the shareholders to set strategy and oversee management.



## *Duties of the Board of Directors*

- Fiduciary obligation to the shareholders and governed by the Articles of Incorporation and Bylaws
- Elected by the shareholders (ESOP Trustee in 100% ESOP)
- Grow Shareholder Value - carry out the mission and values of the company
- Succession Planning - ensures a succession plan is in place for the CEO and senior management (hire, fire and manage)
- Strategic Goals - sets goals for the CEO, approve strategic decisions, compensation committee and corporate governance oversight
- Evaluate offers to purchase the company
- Consider and approve acquisitions of other companies or lines of business
- Hires the Trustee



## WHAT ADVISORS DO YOU NEED TO ADMINISTER YOUR ESOP?

### *The On-Going ESOP Team*

- Trustee - individual or institution with the fiduciary obligation to make decisions related to the trust for the sole benefit of the participants.



## *Duties of the Trustee*

- Acts in the best interest of ESOP participants
- Safekeeping of assets in the ESOP Trust
- Elects and monitors the Board of Directors
- Sets value of the stock annually
  - Engages the valuation firm to appraise the stock each year
  - Read and understand valuation report, including questioning all underlying assumptions
  - Consider whether the valuation's conclusions are consistent with data provided and analysis in the report
- Help ensure there are funds to pay distributions
- Ensure you receive annual statements and understand them



## WHAT ADVISORS DO YOU NEED TO ADMINISTER YOUR ESOP?

### *The On-Going ESOP Team*

- Valuation Advisor - independent firm hired to determine the value of the company on an annual basis for the participant statements.



## *Duties of the Valuation Advisor*

- Determine value of the Company stock annually
- Remain independent of the Company and selling shareholder(s)
- Possess knowledge of ESOP rules and regulations (less exposure to litigation risk)
- Strong valuation experience in your industry
- History of M&A and ESOP transaction experience
- Knowledge valuing long term incentive plans (SARs, phantom stock, stock options, etc.)
- Knowledge valuing warrants
- Consideration of repurchase obligation and its impact on value



## WHAT ADVISORS DO YOU NEED TO ADMINISTER YOUR ESOP?

### *The On-Going ESOP Team*

- ESOP Lawyer - lawyer with expertise in ESOPs (not just ERISA) that helps guide the company to ensure the ESOP continues to be in compliance with the IRS and the DOL.





## *Duties of the ESOP Lawyer*

- Draft ESOP Plan document and Trust Agreement
- Assist in structuring the ESOP transaction and draft required legal documents
- Draft amendments to the ESOP plan
- Assist with any DOL or IRS inquiries
- Ensure experience with ESOPs and ESOP transactions, not just ERISA
  - An ESOP transaction is very similar to an M&A transaction. Many ERISA lawyers are not corporate transaction lawyers. ESOP lawyers are a combination of ERISA and corporate transaction lawyers.

## WHAT ADVISORS DO YOU NEED TO ADMINISTER YOUR ESOP?

### *The On-Going ESOP Team*

- Third Party Administrator (TPA) - firm that provides administration services that results in the participant statements, participant distribution and diversification forms, and filing of annual compliance reports.



## *Duties of the TPA*

- Complete annual administration of the ESOP
- Prepare participant statements annually
- Assist (and process) participant distributions
- Perform annual compliance testing
- File the form 5500



## WHAT ADVISORS DO YOU NEED TO ADMINISTER YOUR ESOP?

### *The On-Going ESOP Team*

- Auditors (CPA) - firm that audits the ESOP plan, if required



## *Duties of the CPA*

- Complete annual audit of the ESOP plan
- Provide annual financial statements to be attached to the Form 5500



## *Sargent's ESOP Story*

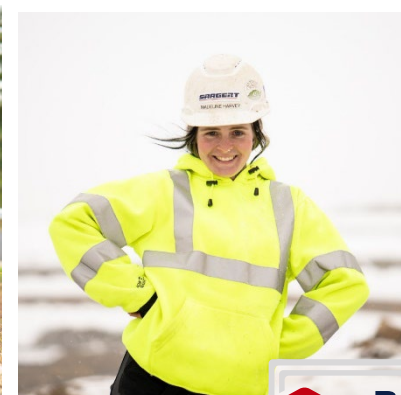
- **April 2013**
  - Formed ESOP - 100% employee-owned
  - 100% leveraged transaction. Selling shareholder - 50 years old, not ready to retire
  - Executive Team wore many hats – Trustees, Board of Directors, Chief Officers
- **2017**
  - Attended NCEO National Conference
  - Tasha joined Sargent as CFO
- **2022**
  - TPA - Principal
  - Valuation – Chartwell Financial Advisory
  - External Trustee – Spinnaker Trust
  - Board of Directors – 2 internal (CEO & CFO); 2 fully independent; 1 former CFO (retired 2012)
  - ESOP Attorney – Tabitha Croscut, Devine Millimet
  - CPAs – Albin, Randall & Bennett







## *Sargent's Employee-Owners*





## *Benefits & Challenges of External ESOP Advisors*

- **Benefits we've experienced**
  - Succession for the Company
  - Accountability
  - Enhanced governance
  - Expertise
  - Mitigate and/or eliminate conflicts of interest (for example executive compensation)
  - Limit fiduciary exposure/risk
- **Challenges we've overcome**
  - Finding the right people
  - Commitment to the process of governance
  - Cost
  - Tradeoffs
    - Perception of, and actual, loss of control over the process
    - Time constraints



# *How do we know if we have the right team*

- **Ask a lot of questions!**

- How many ESOP clients do you have?
- What percentage of your business is devoted to ESOPs?
- How many ESOP transactions do you do in a year?
- What other ESOP advisors do you work with?
- Are you members of the ESOP Association and NCEO?
- Do you regularly attend conferences? Do you speak at conferences?
- Have you been involved in any litigation surrounding ESOPs?
- Do you have insurance? How much?
- How much contact do you have with your clients through out the year?
- What assistance do you give throughout the year?
- Do you communicate with the other advisors through out the year?
- Do you follow the DOL process agreements?
- Do you provide employee education annually?





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*Questions?*

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