

**AGREEMENT CONCERNING PROCESS REQUIREMENTS FOR  
EMPLOYEE STOCK OWNERSHIP PLAN TRANSACTIONS**

Horizon Bank, d/b/a Horizon Trust & Investment Management (“HORIZON”) agrees to apply the following policies and procedures whenever HORIZON serves as trustee or other fiduciary of an employee stock ownership plan (“ESOP”) that is subject to Title I of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.* (“ERISA”) in connection with a transaction involving the direct or indirect purchase, sale, redemption, or exchange of employer securities that are not publicly traded (“Transaction(s)").

**A. Selection and Use of Valuation Advisor - General.** HORIZON shall do the following:

1. Prudently investigate the valuation advisor’s qualifications;
2. Take reasonable steps to determine that the valuation advisor receives complete, accurate, and current information necessary to value the plan sponsor’s securities;
3. Contemporaneously document the steps HORIZON took – including who at HORIZON took those steps – to determine that the valuation advisor received complete, accurate, and current information and to ensure HORIZON understood the advice of the valuation advisor; and
4. Prudently determine whether its reliance on the valuation advisor’s advice is reasonable before entering into any Transaction in reliance on the advice.

**B. Selection of Valuation Advisor – Conflicts of Interest.** HORIZON shall not use a valuation advisor for a Transaction that has previously performed work for any party to the Transaction other than the ESOP or its trustee, including but not limited to any valuation advisor involved in preparing a “preliminary valuation” for or on behalf of the plan sponsor (as

distinguished from the ESOP), a committee of employees of the plan sponsor, any person, group, or entity who is or was advising, consulting, retained by, or otherwise involved with the ESOP sponsor in connection with the consideration of an ESOP transaction, the party(ies) selling or redeeming the shares of employer securities at issue, any counterparty to the ESOP or the plan sponsor involved in the Transaction, or any other entity that is structuring the Transaction (such as an investment bank). HORIZON shall not use a valuation advisor for a Transaction that has a familial or corporate relationship (such as a parent-subsidary relationship) to any of the aforementioned persons or entities. HORIZON shall obtain written confirmation from the valuation advisor selected that none of the above-referenced relations exist.

**C. Selection of Valuation Advisor - Process.**

1. In selecting a valuation advisor for a Transaction, HORIZON shall prepare a written analysis addressing the following topics:
  - a. The reason(s) for selecting the particular valuation advisor;
  - b. A list of all of the valuation advisors that HORIZON considered;
  - c. A discussion of the qualifications of the valuation advisors that HORIZON considered;
  - d. A list of at least three references checked and discussion of the references' views on the valuation advisor;
  - e. Whether the valuation advisor was the subject of prior criminal, civil, or regulatory investigations or proceedings, and the outcome of such proceedings or investigations; and
  - f. A full explanation of the basis for concluding that HORIZON's selection of the valuation advisor was prudent.

2. If HORIZON selects a valuation advisor from a roster of valuation advisors that it has previously used, HORIZON need not undertake anew the analysis outlined above if the following conditions are satisfied:

- a. HORIZON previously performed the analysis described above in connection with a prior engagement of the valuation advisor;
- b. The previous analysis was completed within the calendar year immediately preceding HORIZON's selection of the valuation advisor;
- c. HORIZON documents in writing that it previously performed the analysis, the date(s) on which HORIZON performed the analysis, and the results of the analysis; and
- d. HORIZON obtains and retains the valuation advisor's written confirmation that the information it previously provided pursuant to item (C)(1)(e) above is still accurate.

**D. Oversight of Valuation Advisor – Required Analysis.** Prior to approving a Transaction, HORIZON shall request that the valuation advisor document the following items in its Valuation Report<sup>1</sup> and, if the valuation advisor does not so document, HORIZON shall prepare or require the preparation of supplemental documentation of the following items, to the extent they were not documented by the valuation advisor:

1. Use of Projections: Conduct reasonable inquiry into projections given by individual(s) responsible for providing any projections reflected in the Valuation Report, where such reasonable inquiry shall include, and record in writing:

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<sup>1</sup> All references to the term "Valuation Report" refer to the valuation advisor's report on which HORIZON relies prior to the Transaction in deciding whether to approve or reject the Transaction.

a. Whether those individuals have, or reasonably may be determined to have, any conflicts of interest in regard to the ESOP, including but not limited to any interest in the purchase or sale of the plan sponsor's stock being considered;

b. Whether those individuals serve as agents or employees of persons with such conflicts, and the precise nature of any such conflicts; and

c. How HORIZON and the valuation advisor considered such conflicts in determining the value of the plan sponsor's securities.

2. An opinion as to the reasonableness of any projections considered in connection with the Transaction that explains in writing why and to what extent the projections are or are not reasonable. At a minimum, the analysis shall consider how the projections compare to, and whether they are reasonable in light of, the plan sponsor's five-year historical averages and/or medians and the five-year historical averages and/or medians of a group of comparable public companies (if any exist) for the following metrics, unless five-year data are unavailable (in which case, the analysis shall use averages extending as far back as possible):

a. Return on assets;

b. Return on equity;

c. EBIT and EBITDA margins;

d. Ratio of capital expenditures to sales;

e. Revenue growth rate; and

f. Ratio of free cash flows (of the enterprise) to sales.

3. If it is determined that any of these metrics should be disregarded in assessing the reasonableness of the projections, document in writing both the calculations of the metric (unless calculation is impossible) and the basis for the conclusion that the metric should

be disregarded. The use of additional metrics to evaluate the reasonableness of projections other than those listed in section (D)(2)(a)-(f) above is not precluded, as long as the appropriateness of those metrics is documented in writing.

4. If comparable companies are used for any part of a valuation—whether as part of a guideline company method of valuation, to gauge the reasonableness of projections, or for any other purpose—explain in writing the basis for concluding that the comparable companies are actually comparable to the plan sponsor being valued, including on the basis of size, customer concentration (if such information is publicly available), and volatility of earnings. If a guideline company analysis is performed, explain in writing any discounts applied to the multiples selected, and if no discount is applied to any given multiple, explain in detail the reasons.

5. If the plan sponsor is projected to meet or exceed its historical performance or the historical performance of the group of comparable public companies on any of the metrics described in paragraph (D)(2) above, document in writing all material assumptions supporting such projections and why those assumptions are reasonable.

6. To the extent that HORIZON or its valuation advisor considers any of the projections provided by the plan sponsor to be unreasonable, document in writing all adjustments made to the projections.

7. If adjustments are applied to the plan sponsor's historical or projected financial metrics in a valuation analysis, determine and explain in writing why such adjustments are reasonable.

8. Describe the risks facing the plan sponsor that could cause the plan sponsor's financial performance to fall materially below the projections relied upon by the valuation advisor.
9. If greater weight is assigned to some valuation methods than to others, explain in writing the weighting assigned to each valuation method and the basis for the weightings assigned.
10. Consider, as appropriate, how the ESOP document provisions regarding stock distributions, the duration of the ESOP loan, and the age and tenure of the ESOP participants, may affect the plan sponsor's prospective repurchase obligation, the prudence of the Transaction or the fair market value of the stock.
11. The Valuation Report must explicitly state the rationale for why the stock is being valued on a controlling basis, or a minority basis. This rationale must include a discussion of how the stock being purchased or sold represents a controlling or minority interest and what limitations exist which would impair the exercise of control by the ESOP.
12. Analyze and document in writing:
  - a. Whether the plan sponsor will be able to service the debt taken on in connection with the Transaction (including the ability to service the debt in the event that the plan sponsor fails to meet the projections relied upon in valuing the stock);
  - b. Whether the Transaction is fair to the ESOP participants from a financial point of view;
  - c. Whether the Transaction is fair to the ESOP participants relative to all the other parties to the Transaction;

d. Whether the terms of the financing of the Transaction are market-based, commercially reasonable, and in the best interests of the ESOP participants;

e. Whether both seller financing and financial institution financing was considered, and whether the loans sought from financial institutions were within the amounts the financial institution was willing to loan;

f. Whether the terms of any loan the ESOP receives in connection with the Transaction are as favorable as the terms of any loans between the plan sponsor and any executive of the plan sponsor made within the two years preceding the Transaction; and

g. The financial impact of the Transaction on the plan sponsor, and document in writing the factors considered in such analysis and conclusions drawn therefrom.

13. Explain any material differences between the present valuation and the most recent prior valuation of the plan sponsor performed within the past 24 months by any valuation firm for any purpose (if any exist). For any valuations obtained exclusively for the sellers in connection with the Transaction within the 12 months preceding the transaction, HORIZON will, at a minimum, obtain information on who prepared the valuation, and when they performed it.

**E. Financial Statements.**

1. HORIZON shall request that the plan sponsor provide HORIZON and its valuation advisor with unqualified audited financial statements for the preceding five fiscal years, unless unqualified audited financial statements extending back five years are unavailable (in which case, HORIZON shall request unqualified audited financial statements extending as far back as possible).

2. If the plan sponsor provides to HORIZON or its valuation advisor unaudited or qualified audited financial statements for any of the preceding five fiscal years (including interim financial statements that update or supplement the last available unqualified audited financial statement), HORIZON shall determine whether it is prudent to rely on these financial statements notwithstanding the risk posed by using unaudited or qualified audited financial statements.

3. If HORIZON proceeds with the Transaction notwithstanding the lack of unqualified audited financial statements (including interim financial statements that update or supplement the last available unqualified audited financial statement), HORIZON shall document the basis for its belief that it is prudent to rely on the financial statements and how HORIZON accounted for any risk posed by using financial statements other than unqualified audited financial statements. If HORIZON does not believe that it can reasonably conclude that it would be prudent to rely on the financial statements used in the Valuation Report, HORIZON shall not proceed with the Transaction. While HORIZON need not audit the financial statements themselves, it must carefully consider the reliability of those statements in the manner set forth herein.

4. HORIZON may approve a Transaction notwithstanding the lack of unqualified audited financial statements (including interim financial statements that update or supplement the last unqualified audited financial statement) only if the stock purchase agreement includes a provision requiring the selling or purchasing shareholder(s) who is(are) an officer, manager, member of the board of directors of the plan sponsor, to compensate the ESOP for any losses or other harms caused by or related to financial statements that did not accurately reflect the plan sponsor's financial condition.

**F. Fiduciary Review Process - General.** In connection with any Transaction, HORIZON agrees to do the following:

1. Ensure that sufficient time is allowed to fully, completely, and accurately review and analyze the contemplated Transaction prior to agreeing to a redemption transaction or a closing date for the Transaction;

2. Take reasonable steps necessary to determine the prudence of relying on the plan sponsor's financial statements provided to the valuation advisor, as set out more fully in paragraph E of this section;

3. Critically assess the reasonableness of all projections (particularly management projections), and if the Valuation Report does not document in writing the reasonableness of such projections to HORIZON's satisfaction, HORIZON shall prepare supplemental documentation explaining why and to what extent the projections are or are not reasonable;

4. If HORIZON believes the projections are unreasonable, HORIZON shall ask the valuation advisor to account for the unreasonable projections in its valuation, request new and reasonable projections from management, or reject the Transaction. HORIZON must document the basis for its decision.

5. Ensure that the information the valuation advisor obtains from the plan sponsor and purchasing or selling shareholder(s) includes the following, to the extent it exists:

a. All prior attempts by the purchasing or selling shareholder(s) to purchase or sell their stock in the plan sponsor within the proceeding two (2) years;

b. All prior defaults within the past five (5) years by the plan sponsor under any lending or financing agreement;

- c. All management letters provided to the plan sponsor by its accountants within the past five years; and
- d. All information related to a valuation of the plan sponsor provided to the Internal Revenue Service within the past five years.

**G. Fiduciary Review Process - Documentation of Valuation Analysis.**

HORIZON shall document in writing its analysis of the Valuation Report relating to a Transaction. HORIZON's documentation shall specifically address each of the following topics and shall include HORIZON's conclusions regarding the Valuation Report's treatment of each topic and explain in writing the basis for its conclusions:

- 1. Marketability discounts;
- 2. Minority interests and control premiums;
- 3. The use of a controlling or non-controlling price for the stock interest being valued;
- 4. Stock Option Plans or Stock Appreciation Rights;
- 5. Warrants;
- 6. Projections of the plan sponsor's future financial performance and the reasonableness or unreasonableness of such projections, including, if applicable, the basis for assuming that the plan sponsor's future financial performance will meet or exceed historical performance or the expected performance of the relevant industry generally;
- 7. Analysis of the plan sponsor's strengths and weaknesses, which may include, as appropriate, personnel, plant and equipment, capacity, research and development, marketing strategy, business planning, financial condition, dependence on customers or

suppliers, market share, competitive advantages, and any other factors that reasonably could be expected to affect future performance;

8. Specific discount rates chosen, including whether any weighted average cost of capital used by the valuation advisor was based on the plan sponsor's actual capital structure or that of the relevant industry, and why the chosen capital structure weighting was reasonable;

9. All adjustments to the plan sponsor's historical financial statements;

10. Consistency of the general economic and industry-specific narrative in the Valuation Report with the quantitative aspects of the Valuation Report;

11. Reliability and timeliness of the historical financial data considered, including a discussion of whether the financial statements used by the valuation advisor were the subject of unqualified audit opinions, and if not, why it would nevertheless be prudent to rely on them;

12. The comparability of the companies chosen as part of any analysis based on the plan sponsor's comparable companies;

13. Material assumptions underlying the Valuation Report and all testing and analysis of these assumptions;

14. Where the Valuation Report made choices between averages, medians, and outliers (e.g., in determining the multiple(s) used under the "guideline company method" of valuation), the reasons for the choices;

15. Treatment of corporate debt;

16. Whether the methodologies employed were standard and accepted methodologies, and the basis for any departures from standard and accepted methodologies;

17. The plan sponsor's ability to service all debt or liabilities to be taken on in connection with the Transaction, including but not limited to, its ability to meet any repurchase obligations and its ability to continue as a going-concern;

18. The Transaction's reasonably foreseeable risks as of the date of the Transaction; and

19. All other material considerations or variables that could have a significant effect on the price of the plan sponsor's securities.

**H. Fiduciary Review Process - Reliance on Valuation Report.**

1. HORIZON, through its employees who are primarily responsible for the proposed Transaction, including all employees who participated in decisions on whether to proceed with the Transaction or the price of the Transaction, shall do the following, and document in writing its work with respect to each:

- a. Read and understand the Valuation Report;
- b. Identify and question the valuation report's underlying assumptions;
- c. Make reasonable inquiry as to whether the information in the Valuation Report is materially consistent with information in HORIZON's possession;
- d. Analyze whether the Valuation Report's conclusions are consistent with the data and analysis; and
- e. Analyze whether the Valuation Report is internally consistent in material aspects.

2. HORIZON shall document in writing the following:

- a. How it made its determination to close the Transaction, including the internal process it normally uses and whether this process was followed for this transaction;
- b. The identities of its employees who were primarily responsible for the proposed Transaction, including all employees who participated in decisions on whether to proceed with the Transaction or the price of the Transaction;
- c. All material points on which such employee(s) disagreed and why; and
- d. Whether all such employees concluded or expressed the belief prior to HORIZON's approval of the Transaction that the Valuation Report's conclusions were inconsistent with the data and analysis therein, or that the Valuation Report was internally inconsistent in material aspects.

3. If the employees who were primarily responsible for the Transaction, including all employees who participated in decisions on whether to proceed with the Transaction or the price of the Transaction, believe that the Valuation Report's conclusions are not consistent with the data and analysis or that the Valuation Report is internally inconsistent in material respects, HORIZON shall not proceed with the Transaction.

4. HORIZON shall independently determine whether a Fairness Opinion is required and, if so, shall not proceed without one.

**I. Preservation of Documents.** In connection with any Transaction approved by HORIZON, HORIZON will create a Transaction folder and preserve for at least six (6) years the following:

1. The full name, business address, business telephone number and email address at the time of HORIZON's consideration of the Transaction of each employee who was primarily responsible for the Transaction, including any employee who participated in decisions on whether to proceed with the Transaction or the price of the Transaction, and any other HORIZON employee who made any material decision(s) on behalf of HORIZON in connection with the Transaction;

2. All notes and records created by HORIZON in connection with its consideration of the Transaction, including all documentation required by this Agreement;

3. The vote (yes or no) of each employee of HORIZON who voted on the proposed Transaction and a signed certification by each voting employee, in his or her representative capacity, and all other HORIZON employees who made any material decision(s) on behalf of HORIZON in connection with the proposed Transaction that they have read the valuation report, identified its underlying assumptions, and considered the reasonableness of the valuation report's assumptions and conclusions;

4. All documents HORIZON and the employees identified in paragraph (I)(1) above relied on in making the decisions;

5. All electronic or other written communications HORIZON and the employees identified in paragraph (I)(1) above had with service providers (including any valuation advisor), the plan sponsor, any non-ESOP counterparties, and any advisors retained by the plan sponsor or non-ESOP counterparties;

**J. Debt and Fair Market Value.** The principal amount of the debt financing the Transaction, irrespective of the interest rate, cannot exceed the plan sponsor's securities' fair market value. Accordingly, HORIZON shall not cause an ESOP to engage in a leveraged

stock purchase Transaction in which the principal amount of the debt financing the Transaction exceeds the fair market value of the plan sponsor's securities acquired with that debt, irrespective of the interest rate or other terms of the debt used to finance the Transaction.

**K. Control.** HORIZON will ensure that an ESOP only pays for a "controlling interest" in a company to the extent that the ESOP obtains control over the company and its direction. If HORIZON is asked to consider a Transaction in which:

1. the ESOP does not acquire a "controlling interest,"
2. the ESOP's ability to control the company is not commensurate with the ownership interest it is acquiring,
3. restrictions are placed on the ESOP's ability to exercise its rights to control the company, or
4. the ESOP is not expected to exercise control over the company,

HORIZON will document the degree to which the ESOP will receive less than a full controlling interest, and take the ESOP's receipt of less than a full controlling interest into account in determining the fair market value and purchase price that the ESOP pays. A "controlling interest" in the company includes all of the unencumbered rights of a shareholder who acquired the shares that the ESOP would be purchasing, and the right to control the company's direction.

**L. Consideration of Claw-Back.** In evaluating a proposed Transaction, HORIZON shall consider whether it is appropriate to request a claw-back arrangement, limitation agreement (requiring shareholder to reprice the Transaction if the DOL finds it paid more than the fair market value), or other purchase price adjustment(s) to protect the ESOP against the possibility of adverse consequences in the event of significant corporate events or changed circumstances.

HORIZON shall document in writing its consideration of the appropriateness of a claw-back or other purchase price adjustment(s).

**M. Other Professionals.** HORIZON may, consistent with its fiduciary responsibilities under ERISA, employ or delegate fiduciary authority to qualified professional service providers to aid HORIZON in the exercise of its powers, duties, and responsibilities in the Transaction as long as it is prudent to do so.

**N. Indemnification.** HORIZON will not enter into any agreement that provides for it to be indemnified by the ESOP or by an ESOP-owned company against and from any damages, expense, liabilities, and losses that resulted either from HORIZON's violation of ERISA's prohibited transaction provisions or HORIZON's breach of any fiduciary duty imposed under ERISA.

**O. Compliance with Agreement.** The parties agree that the Secretary may conduct an investigation to determine whether HORIZON is complying or has complied with the terms of this Agreement, and HORIZON agrees that it will reasonably cooperate with any such investigation, including providing promptly any documents requested by the Secretary and making HORIZON and its personnel available for interviews by the Secretary, as requested. The parties agree that the Secretary may bring an action in a court of competent jurisdiction to enforce compliance with this Agreement, and for any other relief provided in this Agreement.

**P. Not an Exclusive List of Fiduciary Duties.** This Agreement is not intended to specify all of HORIZON's obligations as an ERISA fiduciary with respect to the purchase or sale of employer stock under ERISA, and in no way supersedes any of HORIZON's obligations under ERISA or its implementing regulations.

Dated this 23rd day of May, 2022.

For: Horizon Bank, d/b/a Horizon Trust & Investment Management

By: 

For: The United States Department of Labor  
Employee Benefits Security Administration

By: \_\_\_\_\_  
L. Joe Rivers  
Regional Director  
Cincinnati Regional Office