Update on Control Premiums
What the Experts Say
Update on Control Premiums: What the Experts Say

A BVR SPECIAL REPORT
Special thanks to Alina Niculita, MBA, CFA, ASA, for her expert guidance and contributions to this special report.
# Table of Contents

INTRODUCTION ............................................................................................................. 5

1. A CURRENT VIEW OF CONTROL PREMIUMS AND DISCOUNTS ................................. 7

2. THE MARKET PARTICIPANT ACQUISITION PREMIUM AND WHY CONTROL PREMIUMS MATTER ............................................................. 39

3. WHAT’S WRONG WITH CONTROL PREMIUMS? .......................................................... 57

4. NORMALIZING ADJUSTMENTS—TIME TO REVISIT .................................................. 62

5. USING CLOSED-END FUNDS TO DERIVE DISCOUNTS FOR LACK OF CONTROL ....... 65

6. CURRENT ANALYSIS FROM THE FACTSET MERGERSTAT/BVR CONTROL PREMIUM STUDY ................................................................................ 74

COURT CASE SUMMARY TABLE ................................................................................. 86

CASE DIGESTS ................................................................................................................ 88

- Adelphia Recovery Trust v. FPL Group, Inc. (In re Adelphia Corp.) ......................... 88
- AmBase Corp. v. United States .................................................................................... 93
- Amboy Bancorporation v. The Bank Advisory Group ............................................... 96
- In re: Appraisal of The Orchard Enterprises, Inc. ....................................................... 98
- Astleford v. Commissioner ......................................................................................... 104
- Browne v. Browne, Jr. ............................................................................................... 110
- Estate of Cloutier v. Commissioner ......................................................................... 114
- Ehrlich v. Phase Forward, Inc. .................................................................................. 115
- In re El Paso Corp. Shareholders Litigation .............................................................. 118
- Estate of Gallagher v. Commissioner ...................................................................... 122
- Estate of Giustina v. Commissioner ......................................................................... 126
- Halliday v. Halliday ................................................................................................... 129
- Holman v. Commissioner .......................................................................................... 131
- IQ Holdings, Inc. v. American Commercial Lines Inc. ............................................ 135
Estate of Jelke v. Commissioner .......................................................... 137
Estate of Koons v. Commissioner .......................................................... 141
Marcus v. Quattrocchi .................................................................. 145
Estate of Mitchell v. Commissioner ......................................................... 148
Estate of Richmond v. Commissioner ....................................................... 150
Russell v. Russell ........................................................................... 154
In re Southern Peru Copper Corp. ......................................................... 156
Estate of Tanenblatt v. Commissioner ..................................................... 161
Estate of Helen M. Trenchard v. Commissioner ........................................ 164
In re Trados Inc. ............................................................................. 165
In re Tronox Incorporated .................................................................. 171
Tutunikov v. Markov .......................................................................... 178
Wisniewski v. Walsh .......................................................................... 181
Introduction

Control premiums and discounts for lack of control rank high on the list of most litigated business valuation issues. The following issues (and others) lead to litigation and are frequently the subject of dispute in court:

- Assuming discounted cash flow (DCF) method always produces minority/control value;
- Assuming guideline public company method always produces minority value; and
- Using synergistic control premiums to quantify premium for control.

This report includes an entire section that presents many state and federal court cases that deal with issues such as control premiums, discounts for lack of control, and valuation methods and how they relate to the levels of value chart. The cases span the whole array of business valuation purposes including bankruptcy, dissenting shareholder, estate and gift taxes, and marital dissolution.

Chapter 1, “A Current View of Control Premiums and Discounts,” gives the readers a quick overview of the issues a business valuation expert needs to be aware of when facing this concept in a valuation or in litigation, including pros and cons of the various data sources available for quantifying discounts and premiums and very useful sample cases alongside discussion of court cases illustrating the concepts. It also includes some illustrative case studies.

Chapter 2, “The Market Participant Acquisition Premium and Why Control Premiums Matter,” should help those involved in doing fair value work as it discusses guidance from the SEC on the topic of control premiums and it details the work The Appraisal Foundation has done in this area.

Chapter 3, “What’s Wrong With Control Premiums,” discusses, as the title implies, problems with control premiums and closed-end discount fund data.
Chapter 4, “Normalizing Adjustments—Time to Revisit,” discusses yet another element that has a bearing on control and premiums: financial statements adjustments and the interplay between those and the levels of value chart.

Chapters 5 and 6, “Using Closed-End Funds to Derive Discounts for Lack of Control” and “Current Analysis From the FactSet Mergerstat/BVR Control Premium Study,” delve deeply into data sources we as appraisers have available to quantify control premiums and discounts for lack of control.

This report is a useful guide to the subject that presents both qualitative commentaries from numerous experts and the data needed to clarify the quantitative considerations. It also addresses the controversies about the concepts and data, presenting all sides of the argument. Kudos to Business Valuation Resources for compiling yet another very valuable and relevant resource that brings together the thinking of so many business valuation experts on an issue that is always evolving and relevant: control premiums and discounts for lack of control!

Alina Niculita, MBA, CFA, ASA
President and COO
Shannon Pratt Valuations Inc.
Where every trustworthy business valuation begins.

Any informed stakeholder in business valuation, performance benchmarking, or risk management turns to Business Valuation Resources (BVR) for authoritative market data, training, and expert opinion. Trust BVR for unimpeachable business valuation intelligence. Our clients include business appraisers, certified public accountants, merger and acquisition professionals, business brokers, lawyers and judges, private equity and venture capitalists, owners, CFOs, and many others. BVR’s market databases and analysis have won in the courtroom—and the boardroom—for 18+ years.

Deal & Market Data:
- Pratt’s Stats®
- Public Stats™
- BIZCOMPS®
- Economic Outlook Update™
- Factset Mergerstat/BVR Control Premium Study™
- The FMV Restricted Stock Study™
- Valuation Advisors Discount for Lack of Marketability Study™
- ktMINE Royalty Rate Data & License Agreements
- First Research Industry & State Profiles
- Butler Pinkerton Calculator™ Total Cost of Equity and Public Company Specific Risk Calculator™
- Mergerstat® Review & Mergerstat Review Monthly
- Risk Premium Calculator
- Valuation Handbook - Guide to Cost of Capital
- BizMiner Industry Financial Reports
- PitchBook Guideline Public Company Comps Tool

News & Research:
- Business Valuation Update™
- BVLaw™
- Business Reference Guide Online

Training & CPE:
- Webinars
- Web Workshops & Symposiums
- Desktop Learning Centers
- Self-study CPE

Guides, Books & Reports:
- Guides & Books
- Special Reports
- Legal Compendiums

Learn more at: bvresources.com