BVR
What It's Worth

Business Valuation Update

Business Valuation Update™
October 2019, Vol. 25, No. 10

Thank you for visiting Business Valuation Resources, the leading provider of quality acquisition data and analysis. For more information about any of our premier valuation products or services, please call (503) 479-8200 or email info@bvresources.com.

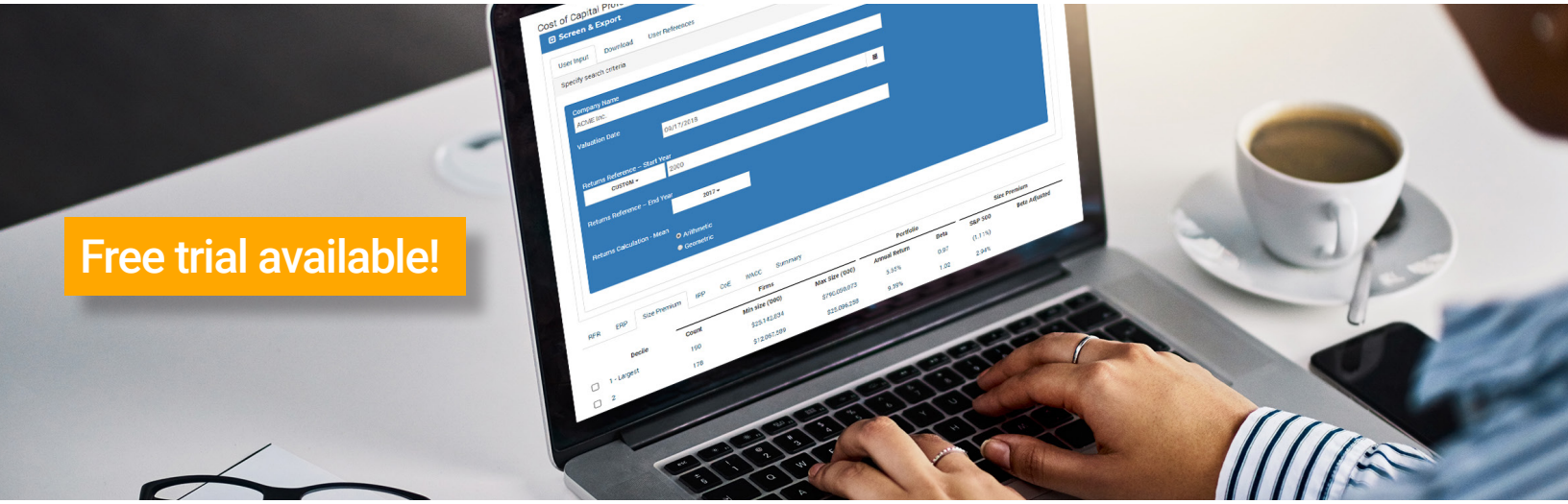
You may also download our complete product brochure at: www.bvresources.com/allproductbrochure

For permission requests, please email permissions@bvresources.com.

Business Valuation Resources, LLC
111 SW Columbia Street, Suite 750 | Portland, OR 97201-5814
(503) 479-8200 | info@bvresources.com
www.BVResources.com

BVR
What It's Worth

bvresources.com/ccprofessional



Empower yourself with the Cost of Capital Professional platform.

The **Cost of Capital Professional** platform provides business valuators and analysts with Equity Risk Premia, Size Premia, Risk Free Rates, and an online calculator (with data similar to the original Ibbotson SBBI data). This state-of-the-art platform offers a simple and transparent way to estimate cost of capital. Take advantage of new features in the tool such as beta-adjusted size premia, Excel download for user-selected variables, and much more!

Harness this powerful platform with:

- **Simplicity:** The Cost of Capital Professional allows you to arrive at a straightforward cost of equity, so you don't have to spend a lot of time explaining your methodology choices.
- **Credibility:** The platform uses the CRSP (Center for Research in Security Prices) market return data set. This 10-decile data set is the most respected and widely-used basis for size premia in practice and academia.
- **Transparency:** You will always see the components of your cost of capital, how the figures were calculated, and the citations of all sources used—everything you need to support your work.
- **New features now available:** Take advantage of new features such as beta-adjusted size premia (size premia in excess of CAPM), Excel download for user-selected variables, ability to compute weighted average cost of capital (WACC), and more!

Request a free trial to the Cost of Capital Professional today!
sales@bvresources.com or 1-503-479-8200

($295 for first user/$100 per each additional user)

BVR
What It's Worth

Vol. 25, No. 10, October 2019

BUSINESS VALUATION UPDATE

TIMELY NEWS, ANALYSIS, AND RESOURCES FOR DEFENSIBLE VALUATIONS

Tales From the Trenches: The Case of the 70% Equity Interest Valued as a Minority

By Robert E. Kleeman Jr., CPA/ABV, ASA, CVA, OnPointe Financial Valuation Group LLC (Englewood, Colo., USA)

Editor's note: This is an article in a series of valuable lessons to be learned based on the experiences of seasoned valuation experts. While you may be able to find some of this advice in books, only real-life experiences can highlight the nuances that can only be found in the minds of the experts who have lived through many engagements. Do you have a lesson to share? Contact the editor at andyd@bvresources.com.

Several years ago, I got involved with a unique valuation for an estate. The estate owned 70% of the common equity of a corporation. During my valuation, I determined that the 70% common

continued on page 7...

Gems From the ASA Advanced BV Conference in New York City

Business Valuation Update attended the ASA Joint 2019 Advanced Business Valuation and International Appraisers Conference in New York City sponsored by the American Society of Appraisers. While gems and jewelry appraisals were featured in a separate track at this multidiscipline event, the gems we found were in the business valuation tracks and the opening remarks.

The new CEO of the ASA, Johnnie White, CAE, CMP, who has over 20 years of experience in professional association management and leadership, greeted attendees. He drew applause when he announced that an overhaul was underway of the ASA website, especially the mobile version. Also, to better position the ASA for the future, the organization is going through a transition from an operations-driven governance model to a policy-driven governance model, based on the "Carver model." This model enables the board of

continued on next page...

In This Issue

Business Valuation Update™ (ISSN 2472-3657, print; ISSN 2472-3665, online) is published monthly by Business Valuation Resources, LLC, 111 SW Columbia Street, Suite 750, Portland, OR 97201-5814. Periodicals Postage Paid at Portland, OR, and at additional mailing offices. Postmaster: Send address changes to *Business Valuation Update (BVU)*, Business Valuation Resources, LLC, 111 SW Columbia Street, Suite 750, Portland, OR 97201-5814.

The annual subscription price for the *BVU* is $459. Low-cost site licenses are available for those who wish to distribute the *BVU* to their colleagues at the same firm. Contact our sales department for details. Please contact us via email at customerservice@bvresources.com, phone at 503-479-8200, fax at 503-291-7955 or visit our website at bvresources.com. Editorial and subscription requests may be made via email, mail, fax or phone.

governors (BOG) to focus on the "ends" (organizational vision and strategy) and leave the "means" (implementation and execution) to the CEO and staff. This is also intended to avoid ongoing confusion over roles, responsibilities, authorities, and accountability of the CEO, the Executive Committee, the BOG, and the discipline committees, and other standing committees.

ASA international past president Robert B. Morrison (Morrison Valuation & Forensic Services LLC) thanked veteran appraiser Lee Hackett, ASA, for serving as interim CEO while the search was on to fill the post permanently. Hackett told the crowd that Morrison asked him to take the temporary post over drinks one day. That "short-term" assignment lasted for 18 months, so he quipped: "If Bob ever invites you for a drink, don't accept!"

Global presence. There was a noticeable presence of international attendees, which reflects the new collaboration between the ASA and global valuation organizations, such as RICS (a London-based valuation professional organization) and the CBV Institute (formerly the CICBV, a Canadian group). For example, the ASA and RICS have signed a Letter of Intent to work together to "ease fragmentation" in the profession. Also, the ASA recently entered into a Memorandum of Understanding (MOU) with ANEVAR, the national association of authorized valuers in Romania that focuses on standards, education, and designation reciprocity. At the conference, we noticed attendees from such places as Switzerland, Saudi Arabia, Brazil, Sweden, Israel, Russia, Mexico, Japan, Korea, Slovenia, and Kazakhstan, just to name a few.

BVC efforts. Kenneth J. Pia Jr. (Marcum LLP), the current chair of the ASA BV Committee, gave the audience an update on the committee, which consists of industry leaders who volunteer their time toward several primary efforts. These efforts include a focus on strategic issues, including interacting with other appraisal disciplines, communicating the value of the ASA credential, government relations, and the development and

delivery of best-in-class business valuation education, not only in the U.S. but worldwide.

IVS update. In his keynote address, Sir David Tweedie, chair of the International Valuation Standards Committee (IVSC), talked about the importance of International Valuation Standards (IVS), which are needed to bring more consistency to valuation practices around the world. IVS (recently updated with changes effective January 2020) has been adopted by over 100 countries and is recognized by global regulatory bodies. This reflects the increasing professionalism of the valuation profession, which should be on a par with accountants, whose internationalization has come through having global standards. The goal of the IVSC is to create that same recognition for appraisers worldwide, which will come as it continues to partner with members who all support the effort to agree on valuation standards to use globally. The IVSC has put the infrastructure in place to help achieve this goal. Tweedie noted that the IVSC has a new Financial Instruments Board, which will function alongside the recently formed Tangible Assets Board and the Business Valuation Board. Regulators see the need for standards for the valuation of financial instruments because of divergence in practice. With the support of members and a new infrastructure, the IVSC is poised for "take-off," Tweedie says.

Next, it was on to the breakouts, and here are some takeaways from a few of the many excellent sessions.

IRS speaks. It's always interesting to hear from the IRS, and two representatives from the agency were on hand. "Just explain what you did," advises Frank Molinari, appraisal team leader at the IRS, who noted that the agency red-flags unsupported opinions of value. Many of the appraisers who work for the IRS were also "on the other side," and they look objectively at valuations and just want to understand how the expert developed his or her opinion. Molinari also mentioned that the IRS is "always behind" in reviewing valuations and you may get contacted several years down the road, so let clients know they may have to incur more fees at that point. Discounts (marketability and control) remain the biggest valuation issues, but he wouldn't mention what the agency considers "too high" in either category.

Valuation specialists are often needed at the IRS, says Cheryl Teifer, a director of field operations (engineering) for staff positions. "Keep your website and online profile up-to-date, as we may be calling you," they say. Appraisers who go on staff go through 52 weeks of training, regardless of the credentials they may have.

There was also some discussion about the Uniform Standards of Professional Appraisal Practice (USPAP) being referred to in recent final regs issued last year regarding charitable contribution deductions. However, the regs stop short of requiring strict compliance with USPAP and state that an appraiser should comply with standards that are generally accepted in the appraisal industry. A question from the audience asked why the IRS does not adhere to valuation standards, but the speakers assured the audience that it did. Not everyone in the audience agreed with that.

Another question asked about the position the IRS is taking on tax affecting pass-through entities. "Read the *Jones* case," Molinari says (referring to the recent *Estate of Aaron Jones v. Commissioner,* T.C. Memo. 2019-101[1]). In that case, the U.S. Tax Court, ruling on an Oregon gift tax dispute, accepted the taxpayers' tax-affected valuations of pass-through entities without overturning *Gross*. The Tax Court's decision is an all-out win for the taxpayers and comes on the heels of the *Kress* case, in which a federal district court adopted the taxpayers' tax-affected valuations of an S corp. Speaking of which, if you are doing any valuations for tax purposes, it's crucial that you read all relevant court cases, Molinari advises.

1 *Estate of Aaron Jones v. Commissioner*, T.C. Memo. 2019-101 (Aug. 19, 2019); case digest and the court decision are available at *BVLaw* (bvresources.com/products/bvlaw)

Judge tells all. A very informative session included the Honorable Matthew F. Cooper, a New York State Supreme Court Justice, who answered questions very candidly. For example, many judges look for experts that can help the judges and attorneys resolve the case before it gets into the courtroom. "We don't want a trial!" he says.

It's been said that the expert who knows the subject business best will win. But how do you convey that knowledge to the court? Follow the money, the judge advises, who says he wants to know how the company or individual makes money, which will tell a great deal about what the company does and how it works. Also, it's "absolutely critical" for the valuation expert to request a site visit and management interviews, advises attorney Allan Mayefsky (Aronson Mayefsky & Sloan), who was on the panel at the same session. If you don't make the request, "we will nail you on that," he says. If the other side is not cooperating, ask the judge to intervene, advises Judge Cooper. He looks "very negatively" at the party that stymies an expert's access to the subject business. "I've never seen a judge deny a motion for a site visit," adds Kenneth Pia (Marcum LLP), who was also on the panel.

Experts also need to avoid jargon, points out Jay E. Fishman (Financial Research Associates), who advises that experts just talk in plain English. He mentioned that, in a previous session (with Deborah Johnson of High-Stakes Communication), an example was given from the courtroom drama *The Verdict*, a 1982 film about a washed-up attorney who tries to make a comeback. The opposing counsel is rehearsing a famous doctor who is to appear as an expert witness in the case of a patient who went into a coma during an operation. The patient stopped getting oxygen because she "aspirated vomitus into her mask," the doctor says, confidently. The attorney screams: "Let's cut the [*expletive deleted*]! Say it: She threw up in her mask!" A great example of avoiding jargon (from a very good film, by the way).

A few other points the judge and panel members made include:

- Know your jurisdiction (the rules vary), and know your judge;
- Credentials matter, but they're not "everything;" industry experience, trial experience, and whether your testimony has been accepted in court are very important;
- Written valuation reports put too much emphasis on calculations and not enough on the narrative;
- Check for mistakes in your report—a few errors can taint the entire valuation report; if you make a mistake and don't catch it, own up to it (it can't be salvaged if your mistake comes out on cross-examination);
- Judges may push hard for a neutral (joint) expert to make the case easier to settle, but they can't force it, and attorneys are not always comfortable with a neutral; and
- Give the judge a shout-out once in a while when you're on the stand ("That's a very good question, your honor!")

Immersive tech. Extremely interesting was a session on new technology that is leveraging intellectual property (and their values) in the entertainment industry. David Dunn (Shot Tower Capital) talked about valuing music assets and pointed out that songs have two components: the composition itself (music and lyrics) and the master recording, which is a recorded performance of a composition. The two components have different characteristics from a valuation standpoint. For example, with the composition, royalty income is paid on every version of the song, but, with the master recording (typically owned by the record label), royalty income is paid only on the specific recording of a song. A key driver in the music industry's return to growth, Dunn says, is the rise of streaming, which

has gone from 1% of recorded revenue 10 years ago to 47% currently and is expected to continue growing.

Travis Cloyd (Worldwide XR) talked about the next wave in entertainment: immersive technology and "digital humans." The acronym "XR" stands for extended (or cross) reality and is an umbrella term for augmented reality (AR), virtual reality (VR), and mixed reality (MR). Worldwide XR digitally replicates famous people and works with CMG Worldwide, a firm that represents the IP rights of hundreds of celebrities, sports stars, historical figures, and the like. XR is being used by many industries today (notably education, architecture, and manufacturing) but is expected to explode in areas such as entertainment, gaming, and healthcare. With immersive technology, imagine not just being able to watch a movie, but being able to be *in* the movie as well. (That notion disturbed someone in the audience, who wondered if starving actors would steal his popcorn.) XR technology has some barriers to overcome, Cloyd points out, with lack of content and the price and usability of head-mounted displays (HMDs) being the main issues.

Navigator vs. CCPro. Jim Hitchner (Financial Valuation Advisors) compared the Duff & Phelps Cost of Capital Navigator to the "new kid on the block," BVR's Cost of Capital Professional. Both of these online platforms are used to help estimate the cost of capital. He also discussed other cost of capital alternatives: data from Professor Aswath Damodaran (New York University Stern School of Business), Dr. Pablo Fernandez (IESE Business School, University of Navarra, Spain), BVR's Implied Private Company Price Line (based on DealStats), and the Pepperdine Private Capital Markets Reports.

Hitchner, who is on the board of advisors of the Cost of Capital Professional, has taken a "good look" at the platform and has recommended others to check it out as well, and the platform will soon be implementing some enhancements. (A free trial is available by emailing sales@bvresources.com). He also discussed enhancements to the Cost of Capital Navigator, such as the inclusion of size tables, a new industry snapshot, an Excel add-in, and enhanced outputs.

A tale-of-the-tape comparison of the two platforms showed the Cost of Capital Professional to be simpler than the Navigator and provide results that are similar to those Navigator provides.

Size effect. There were several sessions on the size effect when estimating the cost of capital, an input that needs more "intellectual curiosity," says Adam Smith (PwC). Based on recent academic research, practitioners should not automatically use a size premium but take a fresh look at it and consider other factors, such as firm quality. A show of hands revealed that everyone in the audience applies a size effect when estimating the cost of capital. But not everyone is a "believer" that the size effect still exists, and there is "conflicting information out there," says Smith. A review of academic papers (a good number of them being recent) shows that there is a substantial disconnect in thinking about the size effect between practitioners and academics. It seems to be a settled matter with practitioners to automatically use a size premium, but it's not a settled matter with academics. Most empirical studies find that the size effect has diminished or disappeared since the early 1980s when Rolf Banz first documented it. The bottom line is that there is "40 years of research without a lot of conclusions," says co-presenter Anthony Pumphrey (Valuation Research).

Speaking of firm quality, Roger Grabowski and Anas Aboulamer (both with Duff & Phelps), in their session, discussed the interaction between firm quality and the size effect. Based on the methodologies and conclusions in two related papers, there is "compelling evidence that the size premium may have been eclipsed by the negative performance of low quality 'junk' firms over certain time periods." That is, the size effect continues to be observed and is significant once you take quality into account, they say.

For more information, see their discussion of the two related papers in the May 2019 issue of *Business Valuation Update*.

Revised Finnerty model. John Finnerty (Alix Partners) unveiled a new version (not yet published) of his average-strike put option DLOM model that can be generalized to accommodate a restriction period of up to about 10 years (data for longer periods was not available) and also if the length of the restriction period is uncertain. His basic model can be used for a restriction period of up to two years. While his new model version has yet to be published, his session PowerPoints include formulas and examples. The ASA recorded many of the conference sessions, so check the organization's website for availability.

Potpourri. One of the good things about attending in person are the things you learn outside of the sessions. Here are a few things we picked up: the ASA's Appraisal Review and Management committee will be focusing more on the "management" aspect, making sure appraisers of all disciplines work together more effectively … the new editor of the ASA's *Business Valuation Review*, Victor E. Jarosiewicz, has joined the PCAOB as a financial economist … Markables, which has a database of over 10,000 global trademark valuations, has a brand new website (markables.net), and the database can now be accessed and searched at no charge … the International Institute of Business Valuers (iibv.org) will do a webinar on financial instruments in late September … prior to the conference, the ASA conducted several courses for individuals seeking the ASA credential; several attendees who took the courses said the exams were "not easy" … the ASA would like to hear from members who are looking for ways to give back to the profession by getting involved as volunteers.

In this recap, we have only scratched the surface of what was presented at the conference, so we urge readers to access the conference session recordings when they become available from the ASA. Of course, we will be at next year's Advanced BV Conference, which will be in Chicago Oct. 11-13, 2020. We hope to see you there! ◆

October Tip From the Field

Long-Term Growth Rate for Determining the Terminal-Year Value

The basic concept is that, in the long run, it is fair to say that a business will not be able to grow as fast as the economies in which it operates. That raises the question of how much lower the growth rate should be in relation to the expected blended (i.e., multiple economies) long-term nominal GDP growth rate. A good way to frame your thinking is to generally consider inflation as the floor and something less than the expected growth in blended nominal GDP as the ceiling. Therefore, the long-term growth rate that is used in determining the cap rate after a business has reached a steady state is usually the expected inflation rate or something in between the expected inflation and the blended long-term nominal GDP rate. Of course, where it falls in between is company-specific, a matter of professional judgment, and open to debate.

Source: Terminal Value: A Perpetual Issue in Valuation, BVR webinar, Aug. 8, 2019; Michael Vitti (Duff & Phelps) and Seth Fliegler (Duff & Phelps); recording available at sub.bvresources.com/bvstore/cd3.asp?pid=CD667.

Tales From the Trenches

... continued from front page

interest did *not* have control of the corporation and, in fact, was a minority interest. The IRS audited the estate tax return, and we prevailed on the issue that the 70% ownership interest was, in fact, subject to both a minority and a large marketability discount.

Backstory. Before we get into the nuts and bolts of why we prevailed on that matter, let me provide you with some of the details surrounding the valuation.

- The corporation was in existence since the late 1950s and was now being managed by the third-generation owner (Owner3G).

- The corporation has a semiproprietary product with certain process patents. There are only three or four competitors in the market. Only about 30 customers across the U.S. use the product. Almost all the customers used more than one of the suppliers for the product.

- Although the company had a long history of solid earnings and stable growth, Owner3G bought out the remaining shareholders using cash reserves and incurring some long-term debt. At the time of the final buyout, Owner3G owned 100% of the equity of the company.

- Owner3G had some marital problems, culminating in a divorce, and Owner3G used corporate funds to buy out any marital interest in the company, incurring more long-term debt in the process.

- Owner3G neglected the company, until it was solvent on a balance sheet basis but insolvent on a cash-flow basis. Unbilled sales and accounts receivable had grown to over 250 days outstanding, and inventory turns decreased from approximately 14 per year to two per year. Accounts payable were about 150 days, and the long-term debt was in arrears more than six months.

- The lender finally demanded that Owner3G bring in a turnaround management group (TMG), or it was going to foreclose on the long-term debt.

The bank finally approved a TMG, with the understanding that the TMG would have full day-to-day operating control of the company. The TMG provided full-time executive management and used existing personnel of the company for production management. As part of the agreement with the bank, Owner3G transferred all the intellectual property that was held outside the company to the company itself, and the bank relieved Owner3G of his personal guarantee for the debt. The new TMG agreement imposed other conditions including:

- TMG would purchase 30% of the equity of the business for cash. The cash was used to bring payables current, with the balance of the cash being applied to the bank credit lines.

- TMG had a "buy-sell" and "put" agreement in place as it related to its ownership interest. This was a formula agreement and did not reflect any fair market value criteria. No "buy-sell" agreement was in place for Owner3G's shares. TMG also held a "right of first refusal" as it related to the 70% equity interest Owner3G owned.

- Owner3G could appoint one member to the board of directors, while the TMG appointed four members to the five-member board.

- TMG was given absolute veto powers over any action the shareholders took.

- TMG was given a management contract that provided significant management fees be paid each year. However, the payment

of those management fees was subject to certain cash-flow requirements, and, to the extent those payments were not paid annually, the unpaid balance carried forward as a preferred "payment" in the future. For the first two years, 100% of the management fees were deferred.

- The company entered into an agreement with the bank that gave the bank veto powers over any capital expenditures in excess of $25,000 per year, as well as TMG management fees and officers' salaries.

- The bank agreement further stipulated that the company would make quarterly interest payments, guaranteed by the TMG, and that the bank would receive 70% of the annual net after-tax cash flows the business generated as principal repayments.

- Owner3G was given a modest salary and remained as the president of the company, although he had no input into day-to-day management.

Over the next three years or so, the company returned to profitability and financial stability. By the third year, sales and profit margins were increasing, and net after-tax cash flows exceeded $1 million per year, with the bank debt being significantly reduced each year. Projections for Year 4 for net after-tax cash flows was more than $1.5 million.

Estate matter. Unfortunately, Owner3G had what he thought was a minor health issue but, upon going to the doctor, was told he had less than six months to live and eventually died within 90 days of the diagnosis. Since Owner3G had a taxable estate (without his ownership interest in the company), we were asked to become involved with the valuation of his 70% ownership interest in the company.

When we were doing our analysis of the company, we noted that the only way the estate would ever get any value from the shares was when (and if) the TMG eventually decided to sell the company as a whole. There was no provision for dividends, and TMG held effective control of all the financial and operational activities of the company as well as collecting a significant management fee annually. The estate was truly a passive investor, without any way to monetize its investment without TMG's assistance.

Our valuation report contained a significant discount for minority and marketability. Upon initial examination, the IRS ruled against the minority discount, stating that, by definition, a 70% equity interest could not be a minority. It also proposed to reduce the marketability discount because the estate held a controlling issue. When the issue was taken to appellate, we were able to convince the IRS that the draconian restrictions between the TMG and Owner3G's estate did, in fact, create a minority position for the 70% interest, and appellate accepted our positions as to both the minority and marketability discounts.

Lesson learned. Although, on the surface, the 70% equity interest certainly appears to be a controlling block, it is important for the valuator to understand *all* the agreements that impact the ownership interest. In the case at hand, the effective controlling interest was the 30% interest the TMG owned. It had complete control of all operations and cash flows, as well as the ability to monetize the holdings in the future. ◆

Robert E. Kleeman Jr., *CPA/ABV, ASA, is managing director of OnPointe Financial Valuation Group LLC based in Englewood, Colo. Kleeman has more than 40 years' experience as a CPA and in the valuation of business interests, including both publicly and closely held businesses and intangibles. Kleeman also has extensive experience as an expert witness and has provided testimony regarding business valuation and commercial damage issues.*

Acquisition Premiums Amid Added Complexity in Market Transactions

By Evan Miller, CPA,
Whitley Penn (Dallas, Texas, USA)

Valuation premiums have drawn a sharper focus as institutions address the diversity of practice. Increased reliance on fair value rather than historical cost accounting has promoted examination of the methodology involved—and with good reason. While uncertainties surrounding conclusions create a challenging environment, those challenges are not entirely new. Intangible asset valuation exposes itself to skepticism and emphasizes the importance of supportability. These issues continue to receive a great deal of attention. The questions confronting the valuation community are intended to strengthen credibility and encourage transparency.

In a fair value setting, while the acquisition premium (known also as a control premium) has been identified as a significant variable, its application and value measurement remain less well understood than the traditional components of acquisition finance. An acquisition premium is the price paid for a target firm that exceeds its preacquisition market value. When evaluating a potential transaction, it is critical to determine whether an acquisition premium should be considered when determining the value of the target business. As a practical matter, it can be helpful to reference recent transactions—market evidence of prices paid to acquire an entire company compared to the publicly traded price of the company's shares prior to the acquisition. A common source for these data is the FactSet Mergerstat/BVR Control Premium Study,[1] which focuses on transactions where a controlling interest is being exchanged and the associated control premiums.

In response to the diversity of practice in valuing controlling interests and the use of control

1 bvresources.com/products/factset-mergerstat-bvr-control-premium-study.

premiums, The Appraisal Foundation issued a fair value advisory[2] that established the term "market participant acquisition premium." This term is intended to emphasize the importance of the market participants' perspective when measuring fair value and to distinguish it from more traditional interpretations of the control premium. While this guidance was developed within the context of fair value measurement, the concepts are largely applicable to measuring fair market value of interests in closely held companies.

In short, the advisory suggests the premium be based on a specific analysis of how a market participant might be able to impact the target's operations by increasing cash flow, reducing risk, or making other identifiable changes through the exercise of control. It also explains that, while historical transaction data can be useful, it should not be relied on exclusively.

Several factors influence a premium. Payment of a premium is often made in recognition of the potential synergy that can be created through the merger of the two firms. Predicting the value that synergy can create can be challenging, and it is often difficult to realize the potential synergy because of the challenges of post-acquisition integration. Also, agency issues can occur when top executives engage in opportunistic behavior in an attempt to further self-interest. Since acquisitions increase the size of a firm, they frequently have a positive effect on compensation. The type of financing employed may also contribute to the purchase price. A reduction in the leverage ratio associated with a stock-financed acquisition can theoretically reduce the risk of outstanding debt, transferring wealth from shareholders to debtholders. Absent restructuring, debtholders will receive at least part of this benefit at shareholders' expense. An equity-financed acquisition can therefore result in both the potential gains of the takeover plus any wealth redistribution effects. Accordingly, this interpretation suggests that equity-financed takeovers involve greater premiums than cash takeovers.

These issues reinforce the challenge of recognizing any advantages associated with a controlling interest, particularly when actual changes that can be made by exercising that control influence the determined value. Financial theory suggests that any benefit or risk differential would ideally be captured in the cash flows, much like the benefit of a controlling interest would likely be reflected when a forward-looking projection orients the subject company toward a market participant capital structure.

At the asset level, a market participant generally would not consider post-combination synergies that are specific to the acquirer in estimation of the projected cash flows related to that asset. Similarly, the financial projections developed for valuing an acquired business typically include only market participant synergies, not buyer-specific ones. Analyses on differences in acquisition premiums invariably include a measure of target firm performance in the periods prior to the takeover bid. While logical arguments suggest that target firms with greater similarity to an acquiring firm should produce higher performance, existing research[3] provides mixed evidence.

It is a challenging position to suggest that a discrete premium is warranted in a transaction to account for the possibility that one buyer may be able to operate it more efficiently than another. Prices are supposed to transmit information in a

2 VFR Valuation Advisory #3: The Measurement and Application of Market Participant Acquisition Premiums, The Appraisal Foundation; appraisalfoundation.sharefile.com/share/view/sa5378ae8f7541ba9.

3 Margaret Cording, Petra Christmann, and David R. King, "Reducing Causal Ambiguity in Acquisition Integration: Intermediate Goals as Mediators of Integration Decisions and Acquisition Performance," *Academy of Management Journal,* 2008. 51(4), 744-767.

transaction—an arbitrary premium obscures that mechanism. Discounts are traditionally applied in recognition of a perceived inability to influence operations, but even these have raised renewed concerns as the considerations would arguably be inherent in the involved cash flows. The ideal approach would identify the margin in cash flow between a minority interest and a controlling one. If the cash flows would not differ, then application of a discount may not be supportable. Perhaps the most fundamental view investigates whether the absence of a discount indicates an inherent premium.

The recent acquisition of Refinitiv underscores this analysis. Much commentary has focused on the premium associated with its share price, but such an analysis ignores the considerable involvement of several other factors. For example, the financing employed had a material impact on the value of the transaction. The London Stock Exchange acquired Refinitiv for $14.5 billion, exclusive of debt, from a consortium led by Blackstone Group Inc. The equity component of the consideration paid reduced the front-end cost as it limited the cash needed to be exchanged. Though subject to lockup agreements, Blackstone will yield additional control in exchange for the cost provisions made available through the stock merger, further contributing to the overall purchase price. These components are significant to the resulting cash flows and are widely thought to influence value.

Conclusion. Overall, the profession should remain mindful not to attempt transforming a technical component of a market transaction into a designed value instrument. Practitioners must continue to open methodology to critical examination and acknowledge the importance of supporting something achieved in part by assumption. It will be helpful for the valuation community to take advantage of a growing understanding, particularly when it involves making conclusions more accessible. ◆

Evan Miller, *CPA, is an associate with Whitley Penn LLP, a public accounting and advisory firm located throughout Texas. He focuses on the valuation of public and privately held businesses and intangible assets for purposes of litigation support, mergers and acquisitions, incentive stock options, and economic damages analyses.*

Ask the Experts

Q: *In healthcare, is the government still very aggressive in pursuing Stark Law and False Claims Act violations?*

A: Yes, this is not letting up, and it is still very much on the minds of the regulators and healthcare clients as well. As part of this ongoing scrutiny, there is increased focus on commercial reasonableness throughout compensation arrangements and other deals that are happening in the healthcare marketplace. At a high level, fair market value can be thought of as how much can be paid and commercial reasonableness is why it is being paid—and can it be defended absent the volume and value of referrals.

Source: The Devil in the Valuation Details: Top 10 Questions Lawyers and Healthcare Organizations Ask, BVR webinar, July 31, 2019; Denise Palencik (Veralon) and Jessica Stack (Veralon); recording available at sub.bvresources.com/bvstore/cd3.asp?pid=CD669.

Rules of Thumb Highlight the 2019 *Business Reference Guide*

Now in its 29th year, Tom West's *Business Reference Guide* (*BRG*) has been updated for 2019 and is a treasure trove for business appraisers. It contains the latest industry-related information including pricing tips, benchmarking information with comparison data, industry resources, and general industry data on over 600 types of businesses, including franchises. There's also an online version with a fully searchable database, and it includes the print version of the guide.

By far the most valuable information in the book for most business appraisers is the coverage of pricing rules of thumb. West says that "[t]he price derived from the rule of thumb is for the operating assets of the business plus goodwill." It does not include real estate, current assets (e.g., inventory, receivables), or any liabilities.

The book has much more than just pricing guidance for most of the industries. For many, it has benchmark performance measures, such as revenue per employee, sales per square foot, average gross sales per store, cost of goods sold, typical labor cost, transaction terms, other line-item breakdowns, and typical transaction terms. For many types of businesses, there is an industry profile, and, for some, there are industry trends. For most, there are resource lists and approximate numbers of such businesses in the United States. There is also a list of industry experts who provided much of the information in the book.

Caveats. Rules of thumb should generally not be relied on as a primary appraisal method. Therefore, valuation analysts should typically use rules of thumb only as a check to corroborate a value conclusion achieved via other methods. However, if there are valuation rules of thumb for an industry, especially if they are widely recognized, they can be useful to estimate a ballpark range of value.

Experts who value franchises agree about not relying completely on rules of thumb because this information misses certain elements. It does not include variations in franchise brand strength or weakness, nor does it take into account location factors or differences in the franchise relationship or agreement, the experts say. Rule-of-thumb information also misses changes in management's ability as the franchisor. However, they can address key valuation considerations. Inherent or implied in the rule of thumb is a cost of capital, a ratio based on operating costs or net profits, expectation of future growth, an assessment of brand strength or risk, an assumption about the scale of the enterprise, and other things that are necessary to complete the valuation.

Rules of thumb are best used for franchises by individuals who have a very deep knowledge of the industry, company, and geographic area. Some people who are buying and selling franchise locations regularly know what they will pay as a percentage of revenue going into the deal. Call it a rule of thumb or a market multiple, but it is simply a starting point for negotiation.[1]

Despite all the caveats about using rules of thumb in pricing businesses, they are commonly used to do just that. They may supply a quick fix, but, if used properly, rules of thumb can come pretty close to what the business will ultimately sell for, according to West.

Rules of thumb in court. In general, courts have been inclined to reject valuation opinions based on rules of thumb. For example, one opinion contained the following language:

1 See *Franchise Value: Valuation Methods and Benchmarking Data,* 2016; BVR Special Report; bvresources.com/products/franchise-value-valuation-methods-and-benchmarking-data.

> [These] formulas … "are in reality the starting point of negotiation; and should not be confused with a valuation procedure."… Formulas based on gross billings are usually converted to a time pay-out of the purchase price and, as such can be misleading because they are often negotiated more over the terms of payment than over the actual value of the business being acquired.… While "rules of thumb may be helpful to accountants or business people to gauge the overall fairness of a particular transaction," i.e., whether it is "in the ballpark," they are not at all helpful to the Court in fixing a specific value on a specific economic enterprise in an ancillary proceeding.… A rule of thumb by definition provides no theory. At best it is a guide or points out direction. At worst, it is nothing.[2]

However, courts have accepted rules of thumb in one form or another. In one case, a husband's expert simply utilized a rule of thumb multiplier of three to five times the husband's salary and then subtracted corporate debt to reach a final value. The trial court adopted this figure as opposed to the asset-based valuation wife's expert presented. The decision was appealed and upheld.[3]

In another case, a joint expert valued the husband's physical therapy practice between $450,000 and $550,000, using a multiplier of roughly 0.42 derived from the *BRG,* an excerpt of which he attached to his report. The trial court approved the source but adjusted the expert's multiplier upward to 1.0 based on the firm's historic growth rates, good location, and well-established clientele. On appeal, the husband challenged the trial court's reliance on the *BRG* for: (1) lack of foundation for the author's expertise; (2) lack of evidence that the joint expert included the *BRG's* method in his appraisal or that the court understood it; and (3) lack of support that the *BRG* method was "reasonable." The husband also claimed that the negative factors underlying the joint expert's selection of a lower multiplier were more credible. The appellate court rejected all these reasons, finding that the *BRG* was a reliable method an "undisputed" expert used.[4]

In the book, West sums things up by saying: "The price of a business is ultimately what someone will pay for it—it is market driven. Or, as the old saying goes, the price is what a buyer will pay and the seller will accept."

The *2019 Business Reference Guide*, published by Business Brokerage Press, is available from BVR at bvresources.com/products/2019-business-reference-guide. ◆

2 *Bostwick v. Bostwick*, 1991 WL 42628 (Del. Fam. Ct 1991). See also, for example, *Bolan v. Bolan*, 32 Ark. App. 65, 796 S.W. 2d 358 (1990) and *Young v. Young*, 600 So. 2d 1140 (Fla. Dist. Ch. App. 1992). These cases are available at *BVLaw* (bvresources.com/products/bvlaw).

3 *Carter v. Carter*, 1990 WL 145736 (Ohio App. 11 Dist. 1990).

4 *In re Marriage of Bauer*, 2011 WL 4337093 (Cal. App. 4 Dist.), Sept. 16, 2011. Available at *BVLaw* (bvresources.com/products/bvlaw).

Understanding Tax Amortization Benefit Considerations and the International Impact

By Mercedes Falcon, ASA,
Valuation Research Corp.
(San Francisco, Calif., USA)

When valuing a foreign target company in the context of a purchase price allocation, the local tax rules within the company's jurisdiction often go unnoticed, but they should be considered and applied pursuant to the acquisition structure. Acquisition transactions can be structured as a taxable asset acquisition or a stock acquisition.

Background. In an asset acquisition, for U.S. tax purposes, the buyer receives a stepped-up basis in the target company's assets (assets minus liabilities). This means that the acquired net assets can be written up (or down) from their carrying value, and taxes can be minimized on any gain in a future sale of those assets.[1] Under this structure, intangible assets are amortized over the allowed amortization period based on the specific tax amortization rules applicable within the jurisdiction of the target company. Under U.S. tax law, both intangible assets and goodwill in a taxable asset purchase are amortized over 15 years.

In a stock acquisition, the buyer does not receive a stepped-up tax basis for U.S. tax purposes in the acquired net assets. However, in certain circumstances, the buyer can make a Section 338 election[2] whereby the transaction can be treated as a taxable asset purchase for tax purposes.

Once the acquisition structure and its tax implications have been established, the business valuation professional must consider the appropriate tax rules that apply to the target company and its jurisdiction.

Apply local tax rules. The specific tax provisions applicable to the country in which the company is located and their impact on the concluded fair values of the intangible assets often receive less attention or are generally set aside until late in the process, when valuing a foreign company's intangible assets in the context of purchase price allocations. In addition to applying a market participant corporate tax rate, business valuation professionals must consider and apply the appropriate tax amortization benefit[3] rules for intangible assets in a given jurisdiction.

Often, when valuing a foreign company, valuation professionals can encounter challenges in calculating the tax amortization benefits applicable to the intangible assets recognized in a given acquisition. Tax amortization benefit rules can differ significantly between countries, and they can also change over time. Therefore, the valuation professional must always consider the latest tax amortization benefit rules applicable as of the valuation date.

Further, amortization periods can differ between the different intangible assets in a given country, and, in some countries, tax amortization is not allowed for certain intangible asset types. This is different from U.S. tax amortization benefit rules where all identifiable intangible assets and goodwill are amortized over a 15-year period

1 "Asset and Stock Deals," macabacus.com.

2 "Sec. 338 elections generally take one of two forms: the Sec. 338(g) election, which is most useful in the case of foreign acquisitions, and the Sec. 338(h)(10) election, which is commonly used in the case of domestic acquisitions. Both types of Sec. 338 elections require that a purchaser acquire 80 percent of the vote and value of the target company's stock." "Valuation Plays Key Role in Section 338 Elections," *VRC Tax Insight Perspectives.*

3 Tax amortization benefit is defined as "the cash flow generated from an asset as a result of being able to write off the full fair value of the asset for tax purposes." "How to Calculate Tax Amortization Benefit," bizfluent.com, Sept. 27, 2017.

for tax purposes, in a taxable asset acquisition or in a stock acquisition where the buyer makes a Section 338 election.

Conclusion. When valuing a foreign company and its intangible assets, the specific tax provisions applicable to the company's country location and the impact on values need to be taken into account. A few other key points to summarize:

- Acquisition structures play a crucial role in determining how certain tax rules are applied;
- Valuation professionals must consider applying a market participant corporate tax rate for the respective country, as applicable, and must consider tax amortization benefit rules to be applied consistently throughout the analysis; and
- Different tax amortization benefit rules apply in different countries and, as such, should be addressed in valuations. ◆

Mercedes Falcon, *ASA, is a senior vice president at Valuation Research Corp. Falcon has extensive experience in business valuation for financial and tax purposes, project management, and corporate finance. She holds the designation of accredited senior appraiser (ASA). She can be reached at 415-513-4779 or MFalcon@ValuationResearch.com.*

Factoring Workforce Engagement Into a Business Valuation

Someday, a "workforce engagement adjustment" will be made to the calculation of the value of an assembled workforce, say a panel of speakers during a recent BVR webinar.[1] In the meantime, all valuation experts should be taking this factor into account for any business valuation when assessing specific company risk. The panel had a comprehensive discussion about what to think about when determining the contribution people make to the value of a company.

Here's the story. We all know the phrase "people are a company's most valuable asset" and appraisers know how to put a value on a "workforce in place," but does that really tell the whole story? It does not! Yes, you can go through a cost-to-replace exercise for ASC 805 purposes, and that's fine and acceptable. But you need to go beyond the calculations and think about how the nature of the workforce drives company value.

The current methodology for estimating the fair value of an assembled workforce does not allow for workforce engagement. "Right now, we are a little bit limited with the tools and methodologies that we have to work with," says Dave Bookbinder, who lead the panel. "We can't actually make those adjustments. But, somewhere down the road, I do believe we will be able to incorporate the engagement factor in our assembled workforce calculation."

Bookbinder is a valuation professional who has conducted valuations of the securities and intellectual property assets of companies. Among the many types of intangible assets that he has valued are human capital assets (people), and he is the author of *The NEW ROI: Return on Individuals*.[2]

"I feel like we are literally on the leading edge of this. I do believe that it is inevitable," adds Dave Nast (Nast Partners).

1 The New ROI: Return on Individuals (Keynote Quarterly), BVR webinar, April 18, 2019; recording available at sub.bvresources.com/bvstore/cd3.asp?pid=CD652.

2 Available at newroi.com.

Why does employee engagement matter? There is a growing body of evidence demonstrating the real, tangible impact to business returns and shareholder value when company's build high levels of employee engagement. Alex Edman's research (2012 and 2016) compared employers named among *Fortune Magazine's* "Top 100 Places to Work" to the S&P 500. His findings demonstrate 2.3%-to-3.8% higher year-over-year stock returns for the top 100 employers for the period 1984 to 2012 and 2016, respectively.

Additionally, a finding[3] by Gallup punctuates the fact that employee engagement consists of concrete behavior, not an abstract feeling. Organizations that view engagement as a feeling conduct employee surveys and offer perks to improve the results. The report finds that the most successful organizations make employee engagement central to their business strategy. They give employees clear expectations and provide them with the tools and support to do their best work. Why are engaged teams more profitable? Those teams who score in the top 20% in engagement realize a 41% reduction in absenteeism and 59% less turnover. Engaged employees show up every day with passion, purpose, presence, and energy.[4]

Movements afoot. Large investors are petitioning the SEC and the CEOs of public companies to make greater disclosures around their human capital investment, according to Bookbinder. "When those public metrics become available, those of us valuing privately held companies will be able to extrapolate that data and make those applications to our privately held companies as well."

This push is also happening in the private sector, points out Laura Queen (29Bison), who has more than 25 years of experience in human resources. "Recently, we've seen pension investment boards show interest in seeing private companies disclose some of this information as well. Human capital data is important to institutional investors as it informs their decisions about where to place their investment dollars," says Queen. From an M&A perspective, she recommends a significant evaluation of workforce engagement when working with organizations on the sell side and the buy side in transactions. "It highlights not only where there are potential risks in an investment opportunity, but it also speaks to whether or not an organization will be able to mesh well with some acquired entity, as they move through the post-merger integration process."

There is an emerging standard, ISO 10018[5] (from the International Organization for Standardization) that is designed to measure whether a company's people have the engagement, capability, and involvement to contribute to the sustainable success of a company, points out Al Cini (Al Cini & Partners), whose firm specializes in leadership development and assessment. The idea is to come up with a way to standardize the value of a company with respect to workforce engagement intangibles so that it is directly factored into the value of the stock. "The point is that companies will have to demonstrate in their annual reports by listing the things they do to value their people by making concrete, positive, actual investments in their workforce," says Cini.

The book *Enterprise Engagement: The Roadmap* adds that, while HR investments are typically viewed as a cost center, when they "gear everyone's passions, capabilities, and interests toward helping to achieve concrete, measurable goals," they become a profit center.[6]

3 gallup.com/workplace/236366/right-culture-not-employee-satisfaction.aspx.

4 See for example fhttps: forbes.com/sites/nazbeheshti/2019/01/16/10-timely-statistics-about-the-connection-between-employee-engagement-and-wellness/#1b9dc08e22a0.

5 iso.org/standard/69979.html.

6 Bruce Bolger, Richard Kern, and Allan Schweyer, *Enterprise Engagement: The Roadmap, How to Achieve Organizational Results Through a Systematic Approach to People Management.* (ISBN 978-0-9915843-4-5), 154-5.

"There are other ISO standards, both of which were ratified in December 2018," adds Queen. ISO 30414[7] is the human capital metrics standard and its companion ISO 30415. Although not yet incorporated into financial reporting in the United States, it is considered the global standard."

Company-specific risk analysis. Workforce engagement would be part of the "quality of management" factor the valuation expert uses to estimate company-specific risk. (A good discussion of company-specific risk analysis and the various factors can be found in Gary Trugman's book, *Understanding Business Valuation,* 5th edition.[8]) If management quality is lacking, the expert may feel that it should be reflected in the company-specific risk premium. How can you get a handle on this? You can ask members of the management team whether they have a high-quality workforce, but they will probably claim that they do. To substantiate this, find out whether the company has done any employee surveys or exit interviews that may give an indication of the level of engagement. One-on-one interviews with employees can also uncover information. For example, ask them whether they would recommend the company to friends as a good place to work.

Also, ask the company whether it has conducted any formal assessment of workforce engagement. For example, Cini's firm developed the Brand and Culture Alignment Toolkit, which is designed to produce a measurement of engagement. "You can plug that into a spreadsheet and make it part of a business valuation proposal," says Cini. The results of an assessment such as this can help substantiate your opinion as to the specific risk the company has in terms of quality of management.

Other risk factors, according to Nast, come down to dollars and cents. The actual cost of turnover can be as much as much as 400% of the departing employee's annual salary. That cost includes everything from conducting the search and interview process to the existing employees covering the work of the vacant role and the time for the new hire to get up to speed. But it doesn't include the damage to morale, contribution to disengagement, loss of productivity, the decrease in customer service or quality control, and more. All of which can lead to even more turnover. Nast goes on to remind us that the No. 1 reason employees leave a company (for more than the past three decades through the dot-com boom, the recession, and today's tight talent market) is due to their relationship with their manager. Leaving us with the conclusion that things such as engagement, cultural alignment, and good management practices greatly affect the bottom line, which can have a real impact on risk and valuation.

Bookbinder notes that "companies that do the right things for their people exhibit higher returns than their counterparts that don't, and ostensibly a lower cost of capital." He envisions a day when a "human capital adjustment factor" will be included as a company-specific risk adjustment to the cost of capital calculation and people will appear as an asset on the balance sheet.

What to do. Consider workforce engagement in your analysis of the quality of management factor in your estimation of company-specific risk. Keep an eye on studies[9] that correlate good employee relations with excess returns and lower cost of capital. Watch for the evolution of the standards discussed above that will require companies to disclose the investments being made to increase the value of their people. ◆

7 iso.org/standard/69338.html.

8 Available at bvresources.com/products/understanding-business-valuation-a-practical-guide-to-valuing-small-to-medium-sized-businesses-5th-edition.

9 Two notable studies are: "The Link Between Job Satisfaction and Firm Value, With Implications for Corporate Social Responsibility," Alex Edmans (faculty.london.edu/aedmans/RoweAMP.pdf) and "Employee Satisfaction, Labor Market Flexibility, and Stock Returns Around the World," Alex Edmans, Lucius Li, and Chendi Zhang (papers.ssrn.com/sol3/papers.cfm?abstract_id=2461003).

BVU News and Trends

A monthly roundup of key developments of interest to business valuation experts.

Regulators, Standard-Setters, VPOs

AICPA releases final PE/VC guide

The AICPA has released the final version[1] of a new accounting and valuation guide, *Valuation of Portfolio Company Investments of Venture Capital and Private Equity Funds and Other Investment Companies,* which provides nonauthoritative guidance and illustrations regarding the accounting for and valuation of portfolio company investments investment companies hold within the scope of FASB ASC 946. This guide may also be useful for noninvestment companies, such as corporate venture capital groups or pension funds, that make similar investments. The guide was developed by the AICPA PE/VC Task Force, which includes members from the PE/VC industry, auditors, valuation practitioners, and AICPA staff.

PCAOB issues new guidance on fair value

The Public Company Accounting Oversight Board has issued four documents that provide guidance on the new requirements for auditing accounting estimates and the auditor's use of a specialist, which includes valuation experts. The four documents are:

- "Auditing Accounting Estimates";
- "Auditing the Fair Value of Financial Instruments";
- "Supervising or Using the Work of an Auditor's Specialist"; and
- "Using the Work of a Company's Specialist."

The new requirements are effective for audits of financial statements for fiscal years ending on or after Dec. 15, 2020. For more information, the PCAOB has created two implementation pages on its website for the new estimates standard[2] and amendments for the auditor's use of the work of specialists.[3]

The Appraisal Foundation seeks panelists for the BVRP

Qualified candidates are wanted to serve on the Business Valuation Resource Panel (BVRP) of The Appraisal Foundation. The purpose of the BVRP is to oversee the development of valuation advisories, provide input on exposure drafts, and offer insight on emerging issues or other matters of like significance to the board of trustees, Appraisal Standards Board, or Appraiser Qualifications Board pertaining to the business valuation discipline. Currently, there are five vacancies on the BVRP, and individuals selected as panelists will serve staggered terms commencing Jan. 1, 2020, for up to three years. Reappointments thereafter will be made annually as needed. Deadline for applications[4] is October 1.

PwC explains FASB proposal to upend goodwill model

Should annual goodwill impairment tests be done away with for public companies? Should other assets be subsumed into goodwill? The FASB is asking these questions and others as it solicits feedback in its recent invitation to comment[5] on identifiable intangible assets and the subsequent accounting for goodwill (comments are due October 7). In a podcast[6] interview, Andreas Ohl (PwC) talks about the five things you need to know about the FASB's proposal. Ohl is also the chairman of the Business Valuation Standards Board at the International Valuation Standards Council.

New FASB philosophy staggers effective dates

The Financial Accounting Standards Board (FASB) has outlined a new philosophy under which it plans to extend and simplify

1 aicpastore.com/Accounting/Standards/FASBStandards/PRDOVR~PC-AVGPCI/PC-AVGPCI.jsp.

2 pcaobus.org/Standards/Implementation-PCAOB-Standards-rules/Pages/auditing-accounting-estimates-fair-value-measurements.aspx.

3 pcaobus.org/Standards/Implementation-PCAOB-Standards-rules/Pages/auditors-use-of-work-specialists.aspx.

4 pcaobus.org/Standards/Implementation-PCAOB-Standards-rules/Pages/auditors-use-of-work-specialists.aspx.

5 fasb.org/cs/Satellite?c=Document_C&cid=1176172950529&pagename=FASB%2FDocument_C%2FDocumentPage.

6 pwc.com/us/en/cfodirect/multimedia/podcasts/fasb-goodwill-accounting-project.html.

effective dates for private companies, smaller public companies, not-for-profit organizations, and employee benefit plans. Under this thinking, a major standard would first be effective for larger public companies and then staggered at least two years later for all other entities. Accordingly, it has issued a proposed Accounting Standards Update (ASU) that would grant private companies, not-for-profit organizations, and certain small public companies additional time to implement FASB standards on current expected credit losses (CECL), leases, and hedging. Comments on the proposed ASU[7] are due by September 16.

CEIV logjam continues

Upwards of 150 individuals have earned the Certified in Entity and Intangible Valuations (CEIV) credential so far, but many more individuals have either enrolled in the program (630 actual enrollees but up to an estimated 800 individuals) or have inquired but not yet enrolled (three to 500 individuals), according to speakers at the recent ASA/USC 14th Annual Fair Value Conference[8] in Los Angeles. Why are there so many still in the pipeline? The Big Four, as well as some smaller firms, have stopped short of credentialing their people pending the finalization of the quality monitoring process. Under this process, all CEIV holders would have to submit a report and work file in the first year for inspection and compliance review. Firms have several concerns here, including the confidentiality of client information, whether the review is a firm-level or individual review, and whether all three VPOs (ASA, AICPA, and RICS) can come in and do an inspection. Also, if valuation is just part of a large project, how do you ensure that the inspection just looks at the valuation piece and not the other disciplines. Alternatives being looked at are a self-reporting mechanism for firms and a rigorous recertification process, where CEIV holders would be retested in order to maintain the credential.

Methods and Approaches

Expert comments on *Vinoskey* ESOP ruling

ESOP appraisers are questioning the technical aspects of the *Vinoskey* and *Brundle* rulings and asking what the recent rulings may mean for the future of employee ownership plans. Jim Joyner (Integra Valuation Consulting LLC), a certified business appraiser who has served as trustee for almost 100 ESOPs, offers his takeaways. Joyner says the recent rulings are an "ominous sign for every ESOP formed within the past six years." As he sees it, "no ESOP is safe from the DOL's aggressive oversight and litigation-driven enforcement approach." He notes that the *Vinoskey* decision "advances the DOL's position that, if the ESOP does not gain 'unfettered control' over the company immediately after the acquisition of all company stock, appraisers must apply a discount for lack of control (5% in this case) against the indicated equity value." He also points out that the court's many direct and indirect criticisms of the use of the capitalization of earnings/cash flow method for the ESOP appraisal make it clear that this method "is practically anathema for any ESOP valuation." Any appraiser brave enough to use it needs to use a "look-back" period of six years or more, Joyner cautions.

Joyner finds it particularly troubling that this 100-page opinion contains no meaningful discussion of the standard of fair market value. He notes that the court seemed concerned exclusively with what a hypothetical buyer (the ESOP) would agree to pay when the FMV standard also requires consideration of what a willing seller would accept to close the deal. As FMV is traditionally understood, both sides must be considered, Joyner says. He contrasts this decision with certain U.S. Tax Court decisions in which Tax Court judges rigorously framed their discussion of FMV in terms of a hypothetical willing buyer and a hypothetical willing seller, both parties seeking to achieve an economically advantageous outcome.

What is missing in this long court opinion, Joyner notes, is any consideration of Vinoskey's decision to make the successful company he created into an employee-owned company. Joyner continues: "I have never met Mr. Vinoskey, but I imagine he is filled with bitter regret. Overall, this ruling may have a chilling effect on other entrepreneurs considering an ESOP. The decision was not in the best interest of employees who would like to benefit from the most successful form of employee ownership: an ESOP."

Joyner concludes: "To me, this case shows why federal district court judges should no longer adjudicate ESOP lawsuits. The complexity of ESOP litigation demands a special master who has the financial skills that are found among Tax Court judges, patent law judges, or the Delaware court judges. The outcome of ESOP cases can contribute to the demise of this form of employee ownership or help with its expansion. It's therefore important that these complex cases are tried by a specialized court."

7 fasb.org/cs/Satellite?c=Document_C&cid=1176173176157&pagename=FASB%2FDocument_C%2FDocumentPage.

8 sub.bvresources.com/bvstore/cd3.asp?pid=CD663.

Valuation Data

New platform unlocks the world of M&A valuations

For the first time, direct access is available to documents that reveal the valuation analyses behind M&A transactions. The Valuation Benchmarking Platform (VBP) is a new online tool that allows you to search for transactions that match your target company and compare your multiples, cost of capital, normalized financial forecasts, and other business valuation assumptions with recent work accepted by the SEC and other regulators. The platform includes live links to all the source documents behind the transactions, including valuation reports, board books, and more. The Valuation Benchmarking Platform is updated monthly and currently contains 2,015 reports, 14,700 analyses with assumptions, 20,500 GPC comparables, and 21,700 M&A transaction comparables. These comparables are those that were used in the valuation analyses behind the transactions. You can also see where these comparables were used in support of other transactions. Consider the platform as an add-on to any financial data platform such as DealStats or CapIQ, and you will harness insight into comparable business valuations like never before. Why not take a look at the platform? Go to the product's webpage[9] to request a demo.

Cost of Capital

20- and 10-year spot yields on T-bonds favored for risk-free rate

Two-thirds of survey respondents say they use the spot yield on Treasury bonds for their risk-free rate when developing an estimate for the cost of capital, according to a *BVWire* survey.[10] Most (58%) use the 20-year spot yield, and the rest (9%) use the 10-year spot yield. A quarter of respondents use a "normalized" risk-free rate developed by Duff & Phelps, and the remainder use something different (e.g., a 30-year spot yield) or a custom rate. Most respondents who use the spot yields get their information right from the U.S. Treasury website.

The concept of normalizing the risk-free rate emerged around the time of the financial crisis and is generally based on historical rates. A number of thought leaders strongly disagree with the use of a normalized rate, such as Chris Mercer of Mercer Capital (see his post[11] on this topic) and Professor Aswath Damodaran of the New York University Stern School of Business, who writes that "a valuation is an assessment of the future as of right now, and you have to use the current risk-free rate."[12]

Trial offer for BVR's online cost of capital tool

If you haven't checked out BVR's new Cost of Capital Professional,[13] now's the time to do it. A trial offer is now available for this

9 bvresources.com/products/valuation-benchmarking-platform.

10 bvresources.com/articles/bvwire/20-and-10-year-spot-yields-on-t-bonds-favored-for-risk-free-rate.

11 mercercapital.com/financialreportingblog/should-business-appraisers-normalize-long-term-treasury-rates-when-building-equity-discount-rates/.

12 aswathdamodaran.blogspot.com/2011/09/risk-free-rates-and-value-dealing-with.html.

13 bvresources.com/COCplatform.

What's New on BVResearch Pro

Every month, BVR adds new content to BVResearch Pro, the largest and most comprehensive library of business valuation content available anywhere. Here are some highlights of what's been added this month:

Books, Articles, Transcripts

- Insurance Agency Valuation and Consolidation Trends (webinar transcript);
- Purchase or Sale of the Closely Held Business (webinar transcript); and
- Using Asset Attrition to Determine Useful Life (webinar transcript).

Legal Research

- *Muszynski v. Muszynski,* 2019 Fla. App. LEXIS 9913 (marital; goodwill);
- *In re Appraisal of Jarden Corp.,* 2019 Del. Ch. LEXIS 271 (dissenting shareholder); and
- *Puklich v. Puklich*, 2019 ND 154; 2019 N.D. LEXIS 153; 2019 WL 2641017 (buyout dispute).

This new content joins over 10,000 other articles, publications, legal digests, webinar transcripts, white papers, and more from the world's foremost thought leaders in business valuation Not a subscriber? Go to bvresources.com/products/bvresearch for details.

simple, independent service for estimating the cost of capital. The platform is designed to bring more professional judgment and common sense back into the process, which has become too much of a complex "black box" of applied mathematics. It supports the buildup method and CAPM calculations for any valuation date. A custom-designed trial period will be set up for you if you contact a member of BVR's sales team either by email at sales@bvresources.com or by phone at 503-479-8200 (ext. 2).

Research Papers, Studies

ASC benchmarking study released

The median EBITDA margin for an ambulatory surgery center (ASC) is 20%, according to the "2019 ASC Benchmarking Survey"[14] from HealthCare Appraisers Inc. The survey examined price increases, volume concentration, financial statement statistics, working capital needs, and revenue per case. The survey was developed in collaboration with the Ambulatory Surgery Center Association (ASCA) and received responses from 118 surgery centers.

Questions to ask amid economic jitters

Whatever your feelings about the recent inverted yield curve or downbeat economic surveys, more business owners may be awake at night worrying about an oncoming recession. Earlier this year, a survey[15] found that over half of small-business owners felt that a recession was coming. A recent survey by the National Association for Business Economics reveals that 74% of U.S. business economists expect a recession in the U.S. by the end of 2021. If business owners feel bad times are coming, they will (hopefully) take steps to help survive, which may impact operations and forecasts.

Looming economic trouble should trigger some questions on an analyst's part during the due diligence process. Examples: Are you taking any steps to conserve cash in case you hit a slowdown in sales? Are you arranging for financing now before credit tightens? Will you be delaying expansion or large capital expenditures? How do you think a recession will affect your suppliers and customers? Are you diversifying your base of customers and suppliers to blunt the recession's ripple effects on your company? You get the idea. Make sure you understand the potential impact of these types of issues on your subject firm.

Small biz optimistic despite financing angst

Even with almost half (49%) of small to midsize businesses claiming that the current business financing environment restricts growth opportunities, businesses appear to be confident about the future, with 68% of them expecting increases in revenue over the next year. This is according to the Q2 2019 Private Capital Access (PCA) Index,[16] a study conducted by Pepperdine Graziadio Business School with support from Dun & Bradstreet.

Books, Guides, Publications

BVR now offers the Johnson/Park DLOM studies

To estimate a discount for lack of marketability (DLOM), business appraisers typically look at the restricted stock studies and the IPO studies. The trouble is, just using the averages from these studies can be challenged because this approach lacks analytical support for the discount. One of the ways to bridge the gap between the studies and the DLOM is the Johnson/Park empirical method. This methodology has been used in several tax court cases including the first family limited partnership (FLP) case to go to trial. Also, it is the third most popular method business appraisers use to determine DLOMs, according to a BVR survey. The method highlights the relation of the DLOM to the return on the investment and quantitatively measures the impact of the rate of return as a function of the DLOM. The "2019 Discount for Lack of Marketability Study"[17] provides objective rate of return measures to implement the Johnson/Park empirical method and includes a thorough explanation and example on how to apply these data.

New edition of cannabis market research guide

For business appraisers who are valuing firms in the cannabis industry, *The State of Legal Cannabis Markets,* 7th edition,[18] is now available. ArcView publishes the guide, and there is a discount for BVR customers. If you use the discount code "BVR100," you will receive a $100 discount.

14 healthcareappraisers.com/insights/valuation-surveys/2019-asc-benchmark-survey.

15 cnbc.com/cnbc-survey-monkey-small-business-survey.

16 dnb.com/content/dam/english/economic-and-industry-insight/DNB_Q2_2019_PCA.pdf.

17 bvresources.com/products/2019-discount-for-lack-of-marketability-study.

18 bvresources.com/products/the-state-of-legal-marijuana-markets-7th-edition.

Global *BVU* News and Trends

Business valuation news from a global perspective.

Regulators, Standard-Setters, VPOs

IVS update becomes effective Jan. 1, 2020

Business valuers who comply with the IVSC's International Valuation Standards (IVS) will have a new update effective the end of the year. There are relatively minor updates to IVS 200, the section specific to business and business interests valuation. Primarily, section 200 now clarifies the expected business valuation methods in companies with complex capital structures including forms of equity beyond common stock. The new 'complex capital structure' paragraph 130.5 states: *[V]aluers may* use any reasonable method to determine the *value* of equity or a particular class of equity. In such cases, typically the enterprise value of the business is determined and then that *value* is allocated between the various classes of debt and equity. Three methods that *valuers* could utilize in such instances are discussed in this section, including: (a) current *value* method (CVM); (b) option pricing method (OPM); and (c) probability-*weighted* expected return method (PWERM). In addition, the January 2020 update includes the new intangible asset standards chapter 'IVS 220 Non-Financial Liabilities.' The IVSC has posted a list of FAQs on the update.[1]

Comments wanted on standards for financial instruments

Until now, no effective set of international valuation practice standards for financial instruments has been generally adopted, according to the International Valuation Standards Council (IVSC).The organization's recently appointed Financial Instruments Standards Board has published an Agenda Consultation,[2] seeking feedback regarding the approach the board should take and how it should prioritize its work. Comments are due September 26. All comments will be published on the IVSC website. The Financial Instruments Standards Board brings together valuation leaders from across the financial world to develop common procedures that will support valuation in this growing and international asset class. The board includes representatives of international banks, prudential regulators, and valuation and accounting firms, and it has begun work to develop international standards in this area of practice.

New handbook on IP valuation

The new *ICC Handbook on Valuation of Intellectual Property Assets*[3] from the International Chamber of Commerce (ICC) is the work of the ICC Task Force on Valuation and Monetization of IP Assets, co-chaired by Dominika Boehm, strategy and business manager, Siemens UAE (previously senior IP counsel, Siemens Germany), and Paul Bevan, founder of Central Value Worldwide (Spain). ICC recognized that both investors and organizations are confronting business valuation issues more regularly 'as part of financial reporting, taxation, mergers and acquisitions (M&A), research and development (R&D), and the sale or purchase of technology licensing.' The new guide recognizes basic cost, income, and market approaches for IP valuation—familiar territory for business valuers. It's particularly useful, however, in addressing:

- The variables that may influence the value of IP assets—including the types of IP rights at stake, the larger valuation context, the purpose of the valuation, and the moment in time in which it takes place;
- The definitions of IP valuation adopted by relevant organizations, such as the World Intellectual Property Organization (WIPO), the International Organization for Standardization (ISO), the Organization for Economic Cooperation and Development (OECD), the International Accounting Standards Board (IASB) or the International Valuation Standards Council (IVSC), and, of course, the British Standards Institute (BSI);
- The evolving international regulatory environment, including the fair value standards from IFRS 13; and
- The importance of IP valuation in international taxation.

1 ivsc.org/files/file/view/id/1586.

2 ivsc.org/files/file/view/id/1590.

3 iccwbo.org/publication/icc-handbook-valuation-intellectual-property-assets.

ICVS credential adds financial instruments training

The International Association of Certified Valuation Specialists, in conjunction with the Center for International Business Valuation, has added an advanced level to the International Certified Valuation Specialist (ICVS) credential. Valuators can now earn the ICVS with Advanced Studies in Financial Instruments (ICVS-A). The ICVS-A designation can be earned along with the initial ICVS or can be added to enhance a current ICVS credential. The ICVS-A designation requires an understanding of valuation techniques for various financial instruments, ranging from basic securities to complex derivative constructs. The inaugural live training, presented with the Southeast Chapter of Business Appraisers, will be held in Orlando, Fla., on December 16, December 17, and December 18. Business valuators with a credential such as the ICVS, ASA, ABV, CICBV, BCA, or CVA are welcome to attend. Upon completion of the training program, students can participate in the ICVS-A credentialing exam. For more information, refer to the ICVS-A brochure.[4]

Cost of Capital

Damodaran updates country risk data

These days, it's very difficult to find a company that is only exposed to domestic risk, according to Aswath Damodaran (New York University Stern School of Business) in his midyear 2019 country risk update[5] that includes free spreadsheets on country risk premiums, sovereign credit default swap (CDS) spreads, corruption scores, political risk scores, and more. He also points out that a company's exposure to country risk should not be determined by where it is incorporated and traded but rather from where it gets its revenue. No longer can country risk be diversified away because what happens in one country will have an impact on other countries. When valuing companies with substantial foreign operations, the country-specific input can be critical. A country risk premium must be used, by either adjusting the cash flows or changing the discount rate.

4 custom.cvent.com/1F2C0013ABDC477BA2F0B754960218D3/files/c6e3c1af8c0e433b95d393663ea264f2.pdf.

5 aswathdamodaran.blogspot.com/2019/08/country-risk-mid-year-2019-update.html.

Research Papers, Studies

Euro STOXX 600 multiples and other data

Based on EV/EBITDA, most sectors in Q2 2019 for the Euro STOXX 600 experienced an increased multiple level (e.g., energy, industrials, or materials) while several EV/revenue multiples remained flat (e.g., consumer discretionary, energy, or industrials), according to the *KPMG International Valuation Newsletter*[6] for the second quarter of 2019. "Following a sharp fall in the last quarter of 2018, the EV/EBITDA multiple of the information technology sector rose at its highest levels for two quarters in a row in 2019, hitting a one-year high by June 2019," the newsletter says. KPMG also gives an update on country risk premiums and inflation-adjusted risk-free rate for BRICS countries and risk-free rate and equity risk premia for the Austrian capital market. In addition, there's an interesting discussion on the effects of the IFRS 16 leasing standard on valuation issues.

Country Views

Hong Kong issues transfer pricing guidance

The Hong Kong Inland Revenue Department (IRD) has released Departmental Interpretation and Practice Notes (DIPNs) Nos. 58, 59, and 60 and an updated version of DIPN No. 28 related to transfer pricing (TP Guidelines).[7] DIPN No. 58 provides detailed explanations on transfer pricing documentation and country-by-country reports. DIPN No. 59 provides guidance on the arm's-length principle and transfer pricing rules. DIPN No. 60 discusses how to ascertain profits attributable to a permanent establishment. DIPN No. 28 was updated to set out IRD's interpretation and practice on the provisions relating to foreign tax deduction after the enactment of the Inland Revenue (Amendment) (No. 6) Ordinance 2018.

6 kpmg.at/NewsletterEvent/getFile.php?id=15660&hash=5d41a1ce41b8c9.89535308.

7 ird.gov.hk/eng/pdf/2019/dipn58.pdf; ird.gov.hk/eng/pdf/2019/dipn59.pdf; ird.gov.hk/eng/pdf/2019/dipn60.pdf; ird.gov.hk/eng/pdf/2019/dipn28.pdf.

BVLAW CASE UPDATE

Featured Case

Keeping *Gross* Alive, Nimble Tax Court Accepts PTE Tax Affecting

Estate of Aaron Jones v. Commissioner, **T.C. Memo. 2019-101 (Aug. 19, 2019)**

In its recent ruling on an Oregon gift tax dispute, the Tax Court found a way to accept the taxpayers' tax-affected valuations of pass-through entities (PTE) without expressly overturning *Gross* and related Tax Court decisions that disallowed tax affecting. This recent decision is a clean win for the taxpayers in the case. On a larger scale, it is a breakthrough for the valuation community in that the Tax Court agrees with appraisers on the importance of tax affecting to develop a more accurate appraisal of PTEs.

Backstory. The decedent, Aaron Jones, founded two closely related Oregon companies, Seneca Sawmill Co. (SSC) and Seneca Jones Timber Co. (SJTC). SSC was organized as an S corporation and was a successful lumber manufacturer. Its mills used advanced technology and produced products that could command a high price. However, SSC's lumber was mainly used to build houses, making the company's financial performance dependent on housing starts.

SJTC was a limited partnership. Its purpose was to invest in, acquire, hold, and manage timberlands and real property. SJTC had tree farms and practiced sustained yield harvesting. The company took care of the land, built access roads, and was engaged in efforts to protect air and water. Its land management practices often exceeded the applicable standards. As the decedent had envisioned, SJTC supplied the timber for SSC, charging the highest price SSC paid for lumber on the open market.

Timber needs to be harvested at the right time to maximize its value. SJTC typically harvested its trees when they were between 50 years old and 55 years old. The company developed projections looking 50 years ahead (assuming a 50-year growth term) to determine the annual yield.

SSC had a 10% interest in SJTC as the sole general partner and exercised broad powers to manage and control SJTC. The two companies shared a management team, and SJTC paid SSC an annual fee for administrative services. During his life, the decedent was president, CEO, and chairman of the board.

Both companies made loans back and forth between them. They were joint parties to third-party credit agreements. SSC depended on SJTC's timber to obtain bank loans. When SSC generated revenue, it transferred the money as a loan or receivable to SJTC to repay the bank loans. On the valuation date (May 2009), SSC had a $32.7 million receivable from SJTC.

In the mid-2000s, when SSC recognized a steady shift in the market toward dry lumber and away from the green lumber SSC had been producing, SSC built a renewable energy plant to help produce dry lumber. In 2009, the decedent founded a third company, Seneca Sustainable Energy LLC (SSE), that was to own the new plant. The cost of the new plant was to be approximately $50 million. In 2009, during the global recession, banks were reluctant to make construction loans. Therefore, SSC had to borrow against SJTC's timberlands. At the time, SJTC advanced SSC over $18.4 million, which grew to over $52 million by 2010.

The increasing weakness in the economy also affected housing starts, forcing SSC to reduce production. At the same time, SJTC reduced its timber harvest to minimize the logs it sold at

depressed prices and allow unharvested timber to continue to appreciate in price.

April 2009 projections. Also, in 2009, a competitor that was concerned about its ability to satisfy loan agreements approached SJTC about a timberland exchange. In April 2009, SSC's management team created projections for SJTC and SSC to determine the companies' ability to comply with their own loan agreements. The team used the same process it had used to create regular, yearly financial projections. The April 2009 projections were more pessimistic than projections for 2009 and 2010 at year-end. Ultimately, SJTC agreed to the timberland exchange.

Ownership before valuation date. SSC had voting stock (class A) and nonvoting stock (class B). Before the valuation date, the decedent owned a majority of class A shares (4,900) and his three daughters each owned an equal, lesser amount of those shares (1,500 each). A third party owned 600 shares. The transfer of shares was subject to a buy-sell agreement. For example, any transfer causing the company to lose S corp status was null and void unless a majority of shareholders gave consent. Also, a transfer to a person other than a family member gave SSC the right of first refusal as to buying them. If SSC declined to do so, the individual shareholders had the option of buying. In either case, the standard of value was the fair market value (FMV) of the shares. The FMV determination required consideration of the anticipated cash distributions related to the shares and the use of discounts for lack of marketability, lack of control, and lack of voting rights.

Before the valuation date, SSC owned all of the general partner units in SJTC. The decedent owned most of the limited partner (LP) units, and the daughters owned equal minority interests. Limited partners also were subject to transfer restrictions. A transfer was invalid if it terminated the partnership for federal and state tax purposes. Also, consent of all partners was necessary to affect substitution of a transferee of partnership units as a limited partner. Limited partners were subject to a buy-sell agreement whose content mirrored the SSC buy-sell agreement.

Transfers of interests in SSC and SJTC. In May 2009, as part of his estate planning, the decedent transferred blocks of SSC shares (class A and class B shares (voting and nonvoting)) as well as SJTC limited partnership units to his three daughters by way of family and generation-skipping trusts.

He signed net-gift agreements with the daughters, assigning liability for gift and estate tax to them. The IRS conceded the agreements were valid. The decedent filed a Form 709 gift tax return with valuation reports for 2009. In 2013, the Internal Revenue Service (IRS) issued a notice of deficiency of nearly $45 million. The appraisal firm valued SSC's class A voting shares at $325 per share and the class B nonvoting shares at $315 per share. It valued the SJTC limited partnership units at $350 per unit. However, the court's opinion notes that the estate's reported values were different from the values the valuation firm determined.

In 2013, the Internal Revenue Service (IRS) issued a notice of deficiency, finding the SSC class A shares were worth $1,395 per unit, the class B shares were worth $1,325 per unit, and the LP units were worth $2,511 per unit. In total, the deficiency in gift tax was almost $45 million, the IRS claimed.

The decedent died a year later, in 2014, and the estate litigated the case in the U.S. Tax Court. By the time of trial, the estate had made a concession concerning the value of the SSC shares, arguing the FMV of class A shares was $390 per share and class B shares was $380 per share. The IRS, on the other hand, increased the value of the LP units for SJTC slightly.

Applicable legal principles. Under Internal Revenue Code § 2502, gift tax applies for each calendar year on the transfer of property during that taxable year. Ordinarily, the donor pays the gift tax. The value of a gift is determined on the date it is given.

Under case law, the standard of value is the fair market value of property transferred as a gift. Fair market value is "the price at which it would change hands between a willing buyer and a willing seller, neither under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." The willing buyer and willing seller are "hypothetical persons, not any specific named person." Further, Revenue Ruling 59-60 and case law provide that, when determining the FMV of unlisted stocks for which there are no recent bids or sales, a number of factors deserve consideration.

The factors are the company's net worth, earning power and dividend-paying capacity, goodwill, the economic outlook of the industry, management and the company's position in the industry, the degree of control of the business represented in the block of stock that is to be valued, and the value of stock in similar, publicly traded companies. When valuing a partnership interest, the value of the partnership's assets may be considered, besides considering the factors used to determine the FMV of stock.

Experts' different approaches. Both parties offered expert valuations of SJTC. But, for SSC, the IRS only offered a rebuttal expert report.

The estate retained a highly qualified appraiser who had conducted about 100 valuations of sawmills and timber product companies. In a nutshell, this expert valued both companies as going concerns and used an income approach (discounted cash flow (DCF) method and a market approach (guideline publicly traded companies method) to value the transferred units. He found SJTC was worth $21 million on a noncontrolling, nonmarketable basis. The value per unit was $380, he found. The noncontrolling, nonmarketable value of the block of LP units the decedent transferred to each daughter was worth about $3.9 million.

The estate's expert found SSC was worth $20 million on a noncontrolling, nonmarketable basis. The class A voting stock was worth $390 per share; the class B voting stock was worth $380 per share, after applying a 3% discount for lack of voting rights.

The IRS' (respondent's) expert used the net asset value (NAV) approach and a market approach to value SJTC as a going concern, on a noncontrolling, nonmarketable basis. He determined SJTC was worth over $140 million. The value of an LP unit was $2,530; the value of the block of LP units the decedent transferred to each daughter was worth nearly $26 million, this expert concluded.

The IRS used a different expert to rebut the estate expert's valuation of SSC.

No weight to NAV approach. The focal point of the court's very detailed opinion was the valuation of SJTC. The overriding disagreement between the parties was whether the company was an operating company that should be valued under an income approach, as the estate's expert maintained, or a natural-resources holding company that should be valued under the net asset value approach, as the IRS' expert proposed.

According to the court, the argument came down to whether the company sold a product or whether it simply held timber as an investment for its partners. The court also noted that companies frequently have aspects of both, operating company and holding or investment company. If so, valuation should not be limited to one approach. SJTC was such a company, the court decided. Its timberlands were its primary assets, whose value increased even if the company was not profitable on a year-to-year basis. But SJTC also was an operating company that planted, harvested, and sold timber. The company ensured its operation was efficient, and it practiced sustained yield harvesting and land management.

Use of the asset-based approach depended on whether there was a possibility that SJTC would be able to sell its underlying assets, the timberlands, the court explained. The greater the likelihood of a sale, the more relative weight should go to the asset-approach.

The court agreed with the estate that here a sale was not likely. For one, holders of LP units could not force a sale of the timberlands under the partnership agreement. SSC, as the general partner with exclusive powers to direct a sale, would not exercise its authority to do so. The court dismissed the IRS' argument that this analysis was inappropriate as it considered specific buyers and sellers rather than the hypothetical actors the FMV required. The court said the restrictions applied to the interest and did not depend on how many limited partners SJTC had and who they were. Any hypothetical buyer and seller of an LP interest would consider the restrictions flowing from the partnership agreement and the rights SSC had over SJTC.

Moreover, the court agreed with the estate's argument that the two companies, although separate legal entities, were in effect a singe business operation. SSC's continued operation depended on SJTC's having ownership of timberlands. SSC, as SJTC's general partner, would not direct SJTC to sell these assets while SSC continued as a sawmill. Considering the companies' interconnectedness simply meant recognizing their economic relationship and the effect on their valuations, the court said. The court concluded the estate expert's DCF analysis was the proper way to value SJTC.

Projections are reliable. The IRS voiced two objections to how the estate's expert performed his DCF analysis. One argument was the expert used unreliable projections to determine SJTC's cash flow.

The expert had used the company's April 2009 projections, which were downward revisions to the projections from the most recent annual report. Management created these updated projections in the context of assessing whether SJTC was going to violate loan agreements.

According to the court, the April projections were the most current projections close to the valuation date and the company used them to make business decisions. Also, the IRS' expert used the April projections for his market-based analysis but averaged them with the projections from the annual report. The IRS expert made the adjustment not because he thought the April projections were unreliable, but because, to him, they represented the worst-case scenario, the court pointed out. Use of the April projections was acceptable, the court found.

Tax affecting is appropriate. The IRS also argued the taxpayers' expert should not have tax-affected earnings projecting cash flow. The expert used a 38% rate (proxy for federal and state taxes combined). He also calculated a 22% premium to capture the benefit to the partners from avoiding a dividend tax, by estimating the implied benefits in past years and considering an empirical study on S corp acquisitions. (He also performed a guideline publicly traded companies valuation, using the tax-affected earnings, but the metrics he used to compare the companies were pretax.)

The IRS, citing the Tax Court's *Gross* decision and later cases, argued tax affecting was improper where SJTC had no tax liability on the entity level and there was no evidence the company would become a C corporation. Moreover, without a showing that two unrelated parties involved in an arm's-length deal would tax affect, the outcome improperly favored a hypothetical buyer over the seller. This meant deviating from the required FMV.

In contrast, the estate, citing *Bernier* (which cited *Del. Open MRI*), contended using zero tax at the entity level inflated the value of an interest in SJTC. A hypothetical buyer and seller would take into account that the individual partners had to pay income tax, at ordinary levels, regardless of whether SJTC made cash distributions.

The court found that, in effect, both parties recognized that a hypothetical buyer and seller would consider SJTC's corporate form; the parties simply disagreed over how to do this. The court observed that the IRS' own experts "do not offer any defense of respondent's proposed zero tax rate." The IRS expert critiqued the estate expert's tax affecting because he believed SJTC was a holding company and its "rate of return is closer to the property rates of return," the court said. But he did not say tax affecting was improper because SJTC paid no entity tax, the court noted. According to the court, the argument over tax affecting was a fight between the parties' lawyers, not the valuation experts.

Further, the court found that *Gross* and later rulings in which the Tax Court disallowed tax affecting could be distinguished from the instant case. The court said that, in *Gross,* the Tax Court was presented with a stark choice: 40% or 0% corporate tax. The *Gross* court did not believe the 40% rate reflected the benefit to the owners from avoiding dividend tax and, "on the record of the case," decided that a 0% rate properly reflected the savings to the owners, the court in the instant case said.

In *Estate of Gallagher*, the taxpayer's expert did not justify tax affecting, but the Tax Court then acknowledged that the benefit to S corp owners regarding tax liability should be considered, the court noted.

In *Estate of Giustina*, the taxpayer expert's method was faulty—he used a pretax discount rate to present value post-tax cash flow, the court noted.

The issue in those cases was not *whether* to account for the tax benefits flow-through entities enjoy, but *how* to do this, the court said. (emphasis added)

In contrast, here the taxpayers' expert took into account both the tax burden and benefit to SJTC's owner, the court said. The expert's "tax-affecting may not be exact, but it is more complete and more convincing than respondent's zero tax rate."

Market-based analysis not controversial. Both experts used the guideline public company method to value SJTC. The court noted that the opposing experts' search for peers generated similar groups of comparable companies. Ultimately, the IRS adopted the estate expert's valuation. The court did the same.

The expert used four measures to analyze the difference between SJTC and the peer group: (1) earnings before interest and taxes (EBIT); (2) earnings before interest, taxes, depreciation, depletion, and amortization (EBITDA); (3) revenue; and (4) adjusted tangible book value of invested capital (ATBVIC). The estate's expert arrived at a weighted enterprise value of $107 million, on a noncontrolling, marketable basis.

Intercompany debt treatment makes sense. In valuing both SSC and SJTC, the estate expert treated intercompany debt as a clearing account or "simply two pockets of the same pair of pants." He excluded the $32.7 million receivable SSC held from SJTC and SJTC's payable but considered the companies' intercompany interest income and expense as operating income and expense. The IRS contended he did this to avoid a negative value for SJTC, which would have led to an "absurd conclusion." This receivable should have been added back into the DCF valuation at the end because it was a nonoperating asset, the IRS claimed. The receivable represented an investment in a separate company, not an investment made in the course of SSC's business.

The court noted that SJTC would only have a negative value if one accepted the premise that the two companies were separate entities, which the court did not. SSC's loan to SJTC was not an investment in a separate company but an intercompany clearing account that management used to move cash back and forth between the related entities, depending on need. Management assigned borrowing costs to the entity that required the cash by charging interest, the court noted. The court added that, while the interest rate was arm's length, reflecting the rate a third-party lender would use, it was not possible for SSC to obtain a third-party loan without using SJTC and its timberland as security. But there was no evidence that SJTC could borrow from third parties in the amounts it obtained as loans from SSC. The estate expert's treatment "captured [the companies'] relationship as interdependent parts of a single business enterprise," the court said. It was not necessary to add back the intercompany debt into the DCF valuation.

Estate expert more persuasive on DLOM. In valuing SJTC, the parties' experts applied discounts for lack of marketability (DLOM) whose rates were very close. The IRS expert used a 30% DLOM, while the estate's expert used a 35% rate. The estate expert considered studies of transfers of restricted stock of publicly traded companies and private, pre-IPO sales of stock

The IRS unsuccessfully claimed the 35% DLOM was excessive. The court said the estate expert explained the reasoning behind his DLOM rate. The models he used were common. He also used the *Mandelbaum* factors and considered SJTC's unique characteristics, including the buy-sell agreement, the company's lack of historical transfers, a potentially indefinite holding period, reported loss in the past 12 months before the valuation date, and the unpredictability of partner distributions.

In contrast, the IRS expert did not consider the buy-sell agreement transfer restrictions and admitted at trial that the restriction would increase the rate by "something like 1% or 2%." The court called this "guessing." The estate expert's 35% DLOM was the proper rate, the court concluded.

SSC valuation withstands IRS' critique. The IRS did not provide an independent valuation of SSC but used expert testimony to critique aspects of the estate expert's valuation.

Besides objecting, unsuccessfully, to tax affecting and the treatment of intercompany

debt, the IRS claimed the estate's expert did not properly account for SSC's general partner interest in SJTC in his DCF analysis. In valuing SSC, the expert added $350,000 in partnership income for each year in the projection period. He arrived at this amount by using the five-year and 10-year historical median distributions from SJTC.

The IRS claimed this approach undervalued the interest. The general partner interest was an outside investment granting SSC exclusive control over SJTC. Rather than looking to projected annual distributions, it was better to use 10% of the value of SJTC.

The court noted the general partner interest was an operating asset. It ensured that the two companies would remain a single business enterprise. The estate expert's treatment of SSC's general partner interest in SJTC was reasonable, the court said.

Taxpayer wins. The court ruled for the taxpayer on all the valuation issues. It approved of the estate expert's use of the DCF to value SJTC, the expert's use of the April 2009 projections, the expert's treatment of intercompany loans, and the expert's valuation of SSC's general partner interest in SJTC. The court found the estate expert's 35% DLOM was reasonable.

Importantly, the court said that the estate expert's tax affecting was "more accurate than the respondent's blunt zero-rate approach."

The final values were:

Shares/units	Value per share/units	Value of block
SSC class A (voting)	$390	$507,000
SSC class B (nonvoting)	$380	$2,073,280
SJTC LP units	$380	$3,901,715

New cases are analyzed and added to *BVLaw* each month. This table provides a review of the newly added cases. To read the analysis of these cases, please visit bvresources.com/bvlaw (subscription required).

Latest Cases Added to *BVLaw*

Case Name/ Full Citation	Experts	Case Type	State/ Jurisdiction	Digest Summary
Estate of Aaron Jones v. Commissioner T.C. Memo. 2019-101 (Aug. 19, 2019)	Richard Reilly (petitioner/estate); Philip Schwab, John Ashbrook (respondent/IRS)	Federal Taxation	Federal	In gift tax dispute, Tax Court adopts estate expert's valuation of two related PTEs, including expert's tax affecting; court distinguishes *Gross* and later cases; issue is not whether to tax affect but how; estate expert's tax affecting was "more accurate than [IRS'] blunt zero-rate approach."
Pizzella v. Vinoskey 2019 U.S. Dist. LEXIS 129579 (Aug. 2, 2019)	Dana Messina (plaintiff/DOL); Frank ("Chip") Brown, Howard Kaplan (defendants/ trustee and owner)	ESOP	Federal	Trial court finds ESOP trustee liable for causing plan to overpay for company stock; trustee failed to adequately respond to red flags in ESOP appraisal and did not act solely in the interest of ESOP, court says; owner is liable for accepting price he knew to be above stock's fair market value.
Lee v. Argent Trust Co. 2019 U.S. Dist. LEXIS 132066 (Aug. 7, 2019)	N/A (plaintiff); N/A (defendant)	ESOP	Federal	Court dismisses private plaintiff's ESOP suit, alleging defendant trustee and other ESOP and company actors violated their fiduciary duties to the plan and overpaid for company stock; a subsequent valuation showed the plan obtained stock at a discount, court concludes.
Kvinta v. Kvinta 2019 Fla. App. LEXIS 10172 (June 28, 2019)	Unknown (husband); unknown (wife)	Marital Dissolution/ Divorce	Florida	In divorce case, appellate court affirms use of coverture fraction method to determine marital value of husband's firm on the valuation date (1995), where company operated abroad, "normal" financial documents were not available, and interest was sold a decade before the divorce trial.
In re Appraisal of Columbia Pipeline Grp., Inc. 2019 Del. Ch. LEXIS 303 (Aug. 12, 2019)	William Jeffers (petitioners); Mark Zmijewski, (respondent)	Dissenting Shareholder	Delaware	In statutory appraisal action featuring publicly traded company, court relies on deal price for fair value; although flawed, sale process, when compared to process in three key high court decisions endorsing deal price, does not undermine validity of deal price; no adjustment for synergies.

BVR TRAINING EVENTS

To register for any of our events, or for more information, visit bvresources.com/training or call 503-479-8200. For subscription access to BVR events, please visit bvresources.com/passport.

DCF Modeling for Early Stage Enterprises: A Fair Value Update
Part of BVR's Special Series on Fair Value
October 2, 10:00 a.m.-11:40 a.m. PT/1:00 p.m.-2:40 p.m. ET
Featuring: Antonella Puca (BlueVal Group LLC) and Andreas Dal Santo (BlueVal Group LLC)

Deriving the Black Scholes Option Pricing Equation
October 10, 10:00 a.m.-11:40 a.m. PT/1:00 p.m.-2:40 p.m. ET
Featuring: Gary Schurman (Applied Business Economics)

Demystifying the Complex World of Discounts for Lack of Marketability
October 24, 10:00 a.m.-11:40 a.m. PT/1:00 p.m.-2:40 p.m. ET
Featuring: Pasquale Rafanelli (Empire Valuation Consultants)

Healthcare Valuation Legal Check Up: Top Issues, Case, and Hot Topics
***Part of BVR's Special Series presented by the* BVR/AHLA Guide to Healthcare Industry Finance**
October 29, 10:00 a.m.-11:40 a.m. PT/1:00 p.m.-2:40 p.m. ET
Featuring: Joe Wolfe (Hall Render Killian Health & Lyman)

CALENDAR

AICPA Auto Dealership Conference
October 28-30
Las Vegas, NV
www.aicpa.org

2019 Financial Consultants' Accelerated Training Institute
October 28-November 2
New Orleans, LA
www.nacva.com

CM&AA Training & Certification
October 28-November 1
Malibu, CA
www.amaaonline.com

AICPA Forensic & Valuation Services Conference
November 4-6
Las Vegas, NV
www.aicpa.org

AICPA Health Care Industry Conference
November 6-8
Coronado, CA
www.aicpa.org

AICPA Oil and Gas Conference
November 11-12
Denver, CO
www.aicpa.org

2019 ASA Fair Value Conference—San Francisco
November 14
San Francisco, CA
www.appraisers.org

Las Vegas ESOP Conference and Trade Show
November 13-15
Las Vegas, NV
www.esopassociation.org

National Tax Conference
November 13-14
Washington, DC
www.aicpa.org

Equity Research and Valuation 2019
November 14-15
New York, NY
www.cfainstitute.org

2019 Financial Consultants' Accelerated Training Institute
November 18-23
San Diego, CA
www.nacva.com

2019 Financial Valuation SuperConference
December 10-11
Fort Lauderdale, FL
www.nacva.com

Intergrowth 2020
April 20-22, 2020
Las Vegas, NV
www.acg.org

2020 IBBA Annual Conference
April 24-25, 2020
Louisville, KY
www.ibba.org

73rd CFA Institute Annual Conference
May 17-20, 2020
Atlanta, GA
www.cfainstitute.com

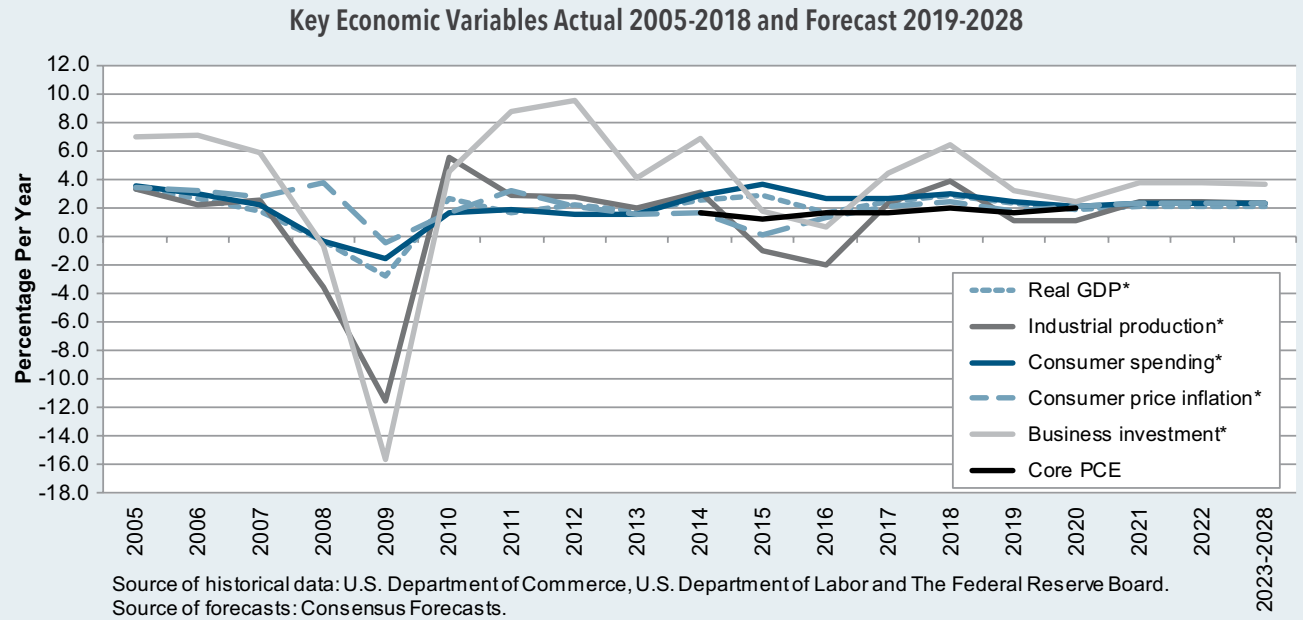
ASA 2020 Equipment Valuation Conference
June 1-3, 2020
Cleveland, OH
www.appraisers.org

NACVA 2020 Annual Consultants' Conference
June 17-20, 2020
Philadelphia, PA
www.nacva.com

For an all-inclusive list of valuation-related seminars and conferences, BV education classes and credentialing programs, and all BVR events, go to bvresources.com/bvcalendar.

BUSINESS VALUATION DATA SPOTLIGHT

Economic Outlook for the Month



Source of historical data: U.S. Department of Commerce, U.S. Department of Labor and The Federal Reserve Board.
Source of forecasts: Consensus Forecasts.
*Numbers are based on percent change from preceding period. Consumer price inflation information is annual averages.

Quarterly Forecasts 3Q 2019-1Q 2020 and Annual Forecast 2019-2020

	Quarterly			Annual			
	3Q 2019	4Q 2019	1Q 2020	2019	*(prior forecast)*	2020	*(prior forecast)*
Real GDP*	1.9	2.0	1.8	2.3	*2.5*	1.9	*1.9*
Consumer spending*	2.4	2.2	1.8	2.4	*2.4*	2.1	*2.1*
Business investment*	2.9	2.7	2.7	3.2	*3.6*	2.4	*2.8*
Consumer price inflation*	2.0	2.2	2.2	1.8	*1.9*	2.1	*2.1*
Real disposable personal income*	2.3	2.0	2.2	2.9	*2.3*	2.1	*2.1*
Unemployment rate	3.7	3.6	3.6	3.7	*3.7*	3.7	*3.7*
Industrial production*	1.4	1.0	1.3	1.1	*1.3*	1.1	*1.3*

Source of forecasts: *Consensus Forecasts - USA*, August 2019.

Notes: Quarterly figures are percent change from prior quarter, at seasonally adjusted annual rates (except unemployment which is the average for that period).

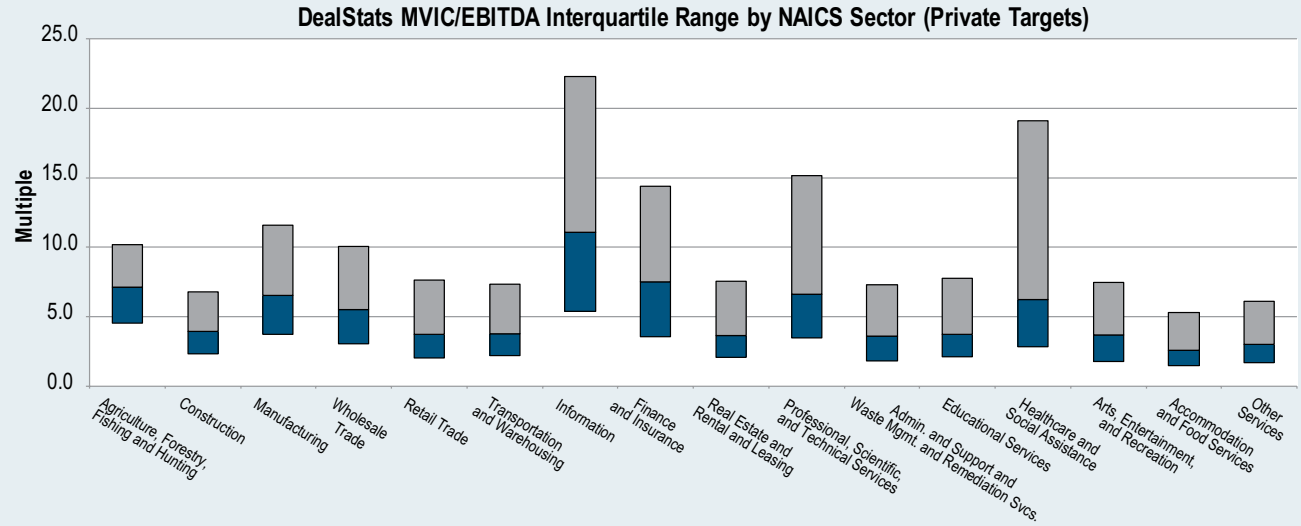
Annual rates are percent change from preceding period (except unemployment, which is the average for that period).

Every month, Consensus Economics surveys a panel of 30 prominent United States economic and financial forecasters for their predictions on a range of variables including future growth, inflation, current account and budget balances, and interest rates.

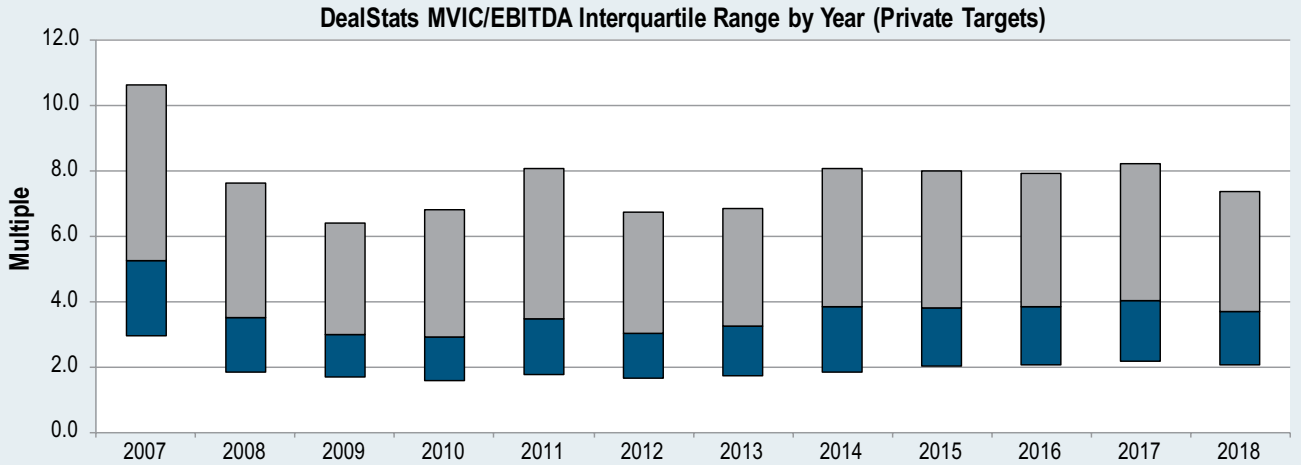
This section is an excerpt from BVR's *Economic Outlook Update* (*EOU*).[1] The *EOU,* a convenient and cost-effective resource, provides a review of the state of the U.S. economy and forecast for the future. Leading experts in the BV profession rely on the *EOU* as the basis for the current economic conditions and forecast portions of their valuation reports. ◆

1 The *Economic Outlook Update* is published monthly and quarterly by Business Valuation Resources, LLC (BVR). Visit bvresources.com/EOU or call 503-479-8200, ext. 2.

MVIC/EBITDA Trends



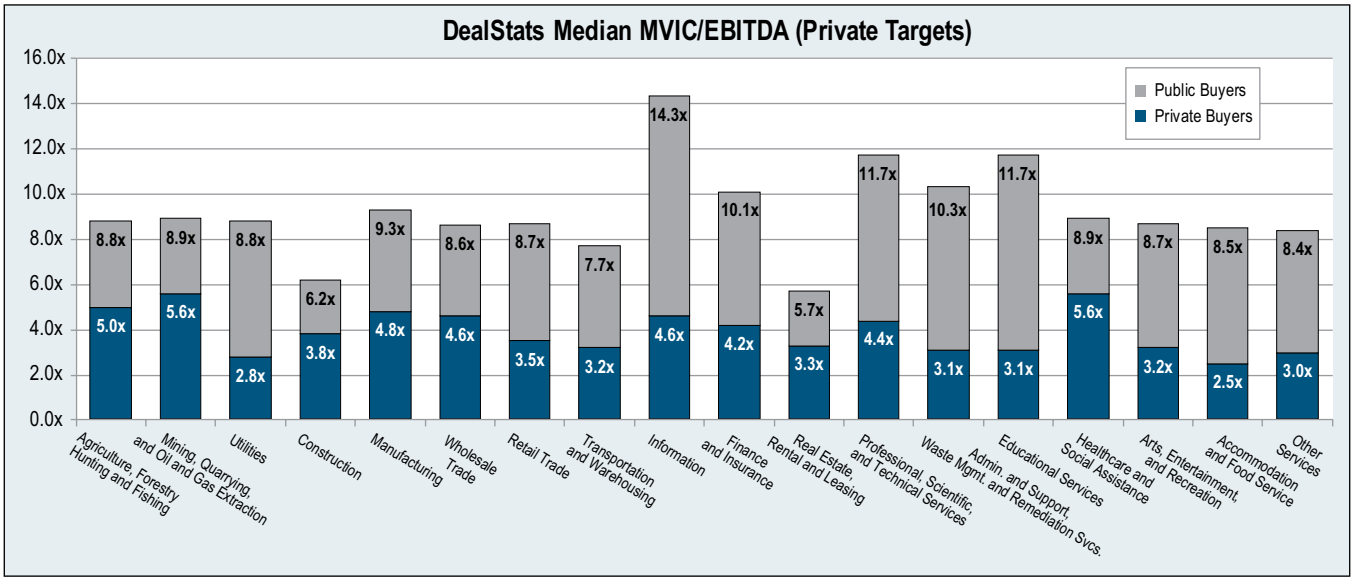
Note: The interquartile range describes the middle 50% of observations. The top of the grey rectangle indicates the 75th percentile, the bottom of the blue rectangle indicates the 25th percentile. The line where the two rectangles meet represents the median. If the interquartile range is large, it means that the middle 50% of observations are spaced wide apart, and, if the interquartile range is narrow, it means the middle 50% of observations are spaced close together.



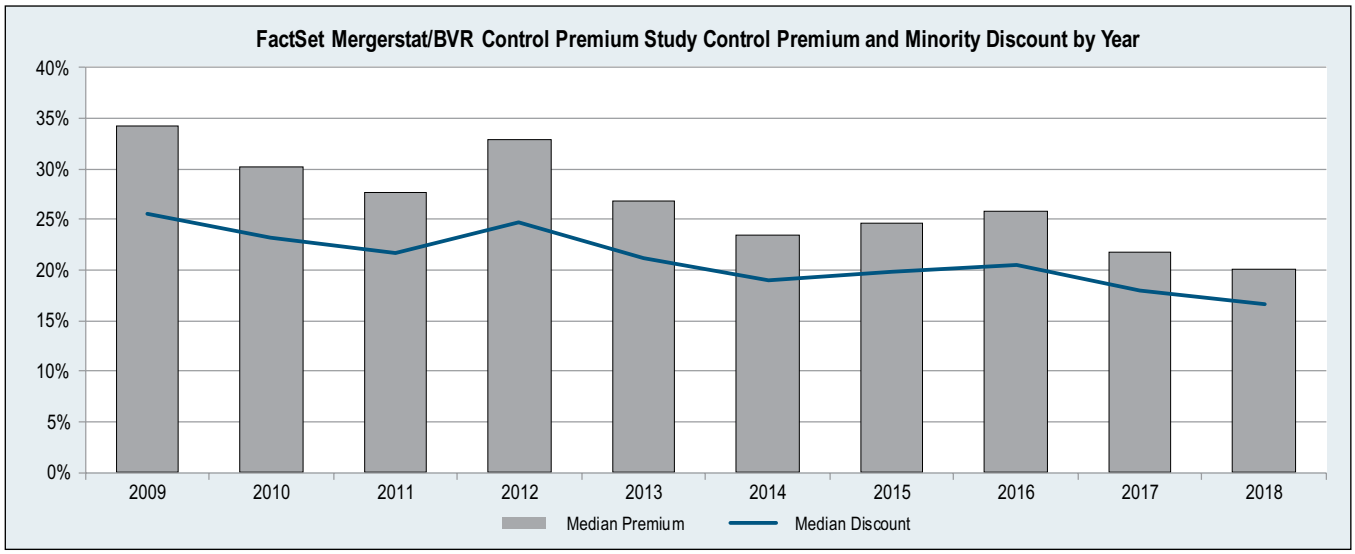
The first two graphs display the interquartile range of the MVIC/EBITDA multiple by major NAICS sector and by year from the DealStats (formerly Pratt's Stats) database for private targets.[1] For the period analyzed, the information sector had the greatest median MVIC/EBITDA multiple. It appears that the accommodation and food service sector had the least dispersion between the first and third quartiles (25th percentile and 75th percentile), while the healthcare and social assistance sector had the greatest dispersion. The accommodation and food service sector had the lowest median MVIC/EBITDA multiple. When reviewing the data by year, the median MVIC/EBITDA was the highest in 2007, at slightly more than 5.0. Since then, the median MVIC/EBITDA multiple has consistently been under 4.0 and often close to 3.0. The MVIC/EBITDA interquartile range appears to have had the most dispersion in 2007 but has been relatively consistent in recent years. The graph on the next page compares the median MVIC/EBITDA multiples paid by private acquirers to the multiples paid by public acquirers. In each of the 18 industry sectors, public buyers paid higher multiples than private buyers. The greatest difference in multiples between private and public buyers occurred in the information sector.

1 Market value of invested capital (MVIC) is the term used for selling price. In addition to showing the median MVIC/revenue multiple by sector and year, the interquartile range provides a measure of dispersion. DealStats is available from Business Valuation Resources (BVR). Visit bvresources.com/dealstats, or call 503-479-8200, ext. 2.

DealStats is a private and public-company transaction database, which provides financial details on over 35,800 acquired businesses. DealStats is used as a comparable transaction data source for sold businesses across all industry sectors. To learn more, visit bvresources.com/dealstats. ◆



FactSet Mergerstat/BVR Control Premium Study



This graph displays the median control premium and median implied minority discount for all industries between 2009 and 2018 from the FactSet Mergerstat/BVR Control Premium Study. As the graph shows, the median control premium and minority discount have been on a downward general trend. After reaching a high of 34.3% in 2009, the median control premium decreased to 20.0% in 2018. The median implied minority discount reached a high of 25.6% in 2009 and has since fallen to 16.6% in 2018. While specific comparables would be needed in a valuation to determine and support a control premium or minority discount, this graph is useful to display trends in control premiums and minority discounts over time. More data, as well as detailed search tools, can be found in the FactSet Mergerstat/BVR Control Premium Study, available at bvresources.com/cps. ◆

PERIODICALS

BVR
What It's Worth

Business Valuation Resources, LLC
111 SW Columbia Street, Suite 750
Portland, OR 97201-5814

October 2019 Cost of Capital Center

General Monthly Cost of Capital Data

Treasury yields[1]	
30-day:	2.10%
5-year:	1.39%
20-year:	1.78%
Prime lending rate:[1]	5.25%
Dow Jones 20-bond yield:[2]	2.86%
Barron's intermediate-grade bonds:[2]	3.38%
Dow Jones Industrials P/E ratios:[2] (Represents median figures)	
On current earnings:	18.9
On 2019 operating earnings est.:	16.5
On 2020 operating earnings est.:	14.3
High yield estimate:[3]	
Mean:	3.2%
Median:	2.6%
Long-term inflation estimate:[4]	2.26%
Long-term rate of growth GDP:[4]	2.07%

BVR's Private Company Cost of Capital Index[5]

Company Revenue ($thousands)	Cost of Capital
1,000	18.9%
5,000	17.3%
10,000	15.6%
15,000	14.8%

BVR's Cost of Capital Professional[6]

	CRSP Equity Risk Premium	
Time Period	**Historical ERP (10Y T-Bond)**	**Historical ERP (20Y T-Bond)**
1928-2018	6.39%	5.80%
1950-2018	6.53%	5.95%
1960-2018	4.20%	3.58%
1970-2018	3.73%	2.82%
1928-2017	6.51%	5.90%
1950-2017	6.69%	6.10%
1960-2017	4.35%	3.70%
1970-2017	3.90%	2.96%

1 Source: The Federal Reserve Board as reported by the BVR *Risk-Free Rate Tool*, located at bvresources.com/riskfreerates.asp, Sept. 1, 2019.

2 Barron's, Sept. 2, 2019.

3 Finra.org, Sept. 3, 2019.

4 10-year forecast; Federal Reserve Bank of Philadelphia, Livingston Survey, June 7, 2019.

5 After-tax cost of capital (calibrated for 35% tax rate and mid-period convention) for average/typical risk company. For use on unlevered, after-tax expected free cash flows. Based on DealStats data and Dohmeyer, Burkert, Butler and Tatum's Implied Private Company Pricing Line (IPCPL). Numbers are provided by the IPCPL developers as of Oct. 4, 2018. See the IPCPL page at bvresources.com/ipcpl.

6 These data are sourced from *BVR's Cost of Capital Professional* online platform, which offers equity risk premia, size premia, and risk-free rates and allows you to compute cost of equity and WACC estimates. This powerful resource provides a simple and transparent way to estimate cost of capital. You will always see the components of your cost of capital, how the figures were calculated, and the citations of all sources used—everything you need to support your work. To learn more, visit bvresources.com/ccprofessional.

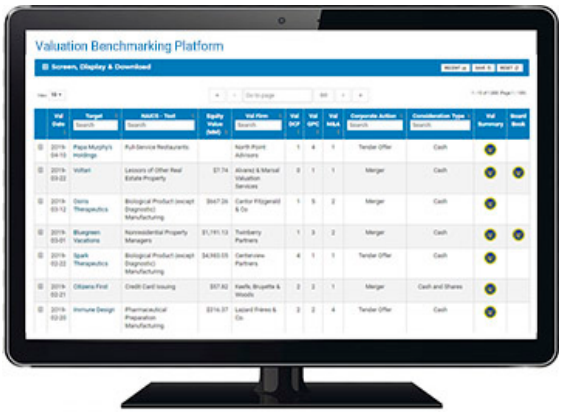
BVR
What It's Worth

bvresources.com/VBP

Introducing BVR's newest platform:

Valuation Benchmarking Platform

Get insight into comparable business valuations like never before.



BVR's new Valuation Benchmarking Platform (VBP) is a groundbreaking tool that lets you review the valuation assumptions made by leading valuation and investment banking firms in the profession. You can search for valuation reports from companies that are similar to your subject company using dozens of customizable criteria. It's an ideal add-on to any financial data platform so you can see what conclusions other top analysts reached—and how they got there.

Explore the valuation data, inputs, and methods used by your peers...

- See the most appropriate valuation inputs and data employed in similar valuations
- Gain insight into how–and when–other financial analysts chose the various income, market, and asset approaches and see which figures and comps they used
- Get live links to all the source documents, including valuation reports, valuation opinions, and board books (even when a transaction has multiple valuation analyses from several firms)
- Compare your multiples, cost of capital, normalized financial forecasts, and other business valuation assumptions with recent work accepted by the SEC and other regulatory and reporting entities

Learn more about the Valuation Benchmarking Platform: bvresources.com/VBP

Contact us today at: 1-503-479-8200 ext. 2 or sales@bvresources.com