Considerations of the Merger Price in Delaware Appraisal Rights Proceedings

Ben R. Duffy

This discussion provides a review of certain Delaware Court of Chancery decisions involving dissenting shareholder appraisal rights actions. Specifically, the discussion focuses on three appraisal rights proceedings in which fair value was determined to either equal—or deviate from—the actual merger transaction price. This discussion (1) describes the facts of the cases, (2) explains the Chancery Court's reasoning behind its decisions, and (3) recommends a conclusion regarding the implications of the merger price in Delaware appraisal rights proceedings.

Introduction

In many statutory dissenting shareholder appraisal rights actions, the finder of fact has to decide whether the actual transaction merger price was, in fact, the appropriate fair value for the dissenting shareholders' stock.

The merger price has been used in the determination of fair value as early as 2004. More specifically, in the *Union Illinois v. Union Financial Group* matter,[1] the court found that the merger price was equivalent to the fair value of the business. The December 31, 2001, acquisition of Union Financial Group, Ltd. ("UFG"), resulted in a dissenting shareholder appraisal rights dispute.

In Union Illinois 1995 Investment L.P. ("Union Illinois"), the petitioner, did not agree that the merger price was fair. Union Illinois pursued a dissenting shareholder appraisal rights action against UFG. Union Illinois argued for a significantly greater fair value price than the actual merger price. In the instant case, UFG provided evidence supporting the existence of a robust transaction process involving numerous informed bidders with the ability to purchase UFG.

Because a vigorous sale process was undertaken, the court ruled that the fair value of UFG was equal to the merger price—less synergies. In general, the merger price may be considered as an indication for fair value in dissenting shareholder proceedings, post *Union Illinois v. UFG*. In dissenting shareholder appraisal rights fair value matters, analysts should consider the merger price indication and understand the process by which the actual merger transaction was completed.

Judicial Decisions regarding Merger Price as an Indication of Fair Value

Dissenting shareholder appraisal rights litigation sometimes arises after a merger or an acquisition. Such litigation occurs when shareholders are dissatisfied with the transaction process or the transaction pricing. Pursuant to 8 Del. C. Section 262 (the "Appraisal Statute"), "once the procedural strictures are met and entitlement to appraisal is perfected, the Appraisal Statute provides shareholders who did not vote in favor for certain transactions a statutory right to have the court value their shares."

This appraisal right has opened the door to frequent dissenting shareholder litigation in the Delaware Court of Chancery.

It is not uncommon for noncontrolling shareholders to form opinions that a transaction was not completed in their best interest. Noncontrolling

shareholders can reach this conclusion when a valuation analyst concludes a significantly greater fair value estimate than the transaction price.

A possible error in the rationale of former dissenting shareholders is to disregard the effect of market conditions on the transacted share prices. Market conditions can create a premium or discount in the merger price when compared to a fair value analysis that is based on the business valuation income approach.

Figure 1 presents trends in dissenting shareholder appraisal rights litigation for mergers and acquisitions from 2007 through the first half of 2016. Shareholder appraisal rights litigation seemed to be slightly more common from 2010 to 2014, but the number of shareholder litigation matters per year has decreased over the last two years.

The recent decrease in dissenting shareholder appraisal rights litigation is perhaps due to the *Trulia* decision, which denounced disclosure-only settlements.[2]

Percentage of Transactions Subject to Dissenting Shareholder Appraisal Rights Litigation

Dissenting shareholder appraisal rights matters recently decided in the Chancery Court illustrate the controversial nature of fair value determination. These fair value matters can provide a perspective of the judicial acceptance or rejection of merger price as an indication of the subject company stock financial fair value.

In Re Appraisal of PetSmart, Inc.

On March 11, 2015, BC Partners, Inc., acquired PetSmart, Inc., for a purchase price of $83 per share.[3] The dissenting shareholders were dissatisfied with the transaction price and petitioned for the use of a discounted cash flow ("DCF") valuation method to determine the PetSmart, Inc., share fair value. Both sides presented valuation analyses to conclude fair value.

J.P. Morgan ("JPM") performed a fairness opinion for PetSmart, Inc., and determined that $83 was a fair transaction price. Compass Lexecon was engaged by the shareholders and prepared a valuation analysis that resulted in a fair value of $128.78 per share.[4]

Both valuation opinions—that is, the opinions issued by the valuation analysts retained by both the petitioners the and defendant—were based on the DCF business valuation method.

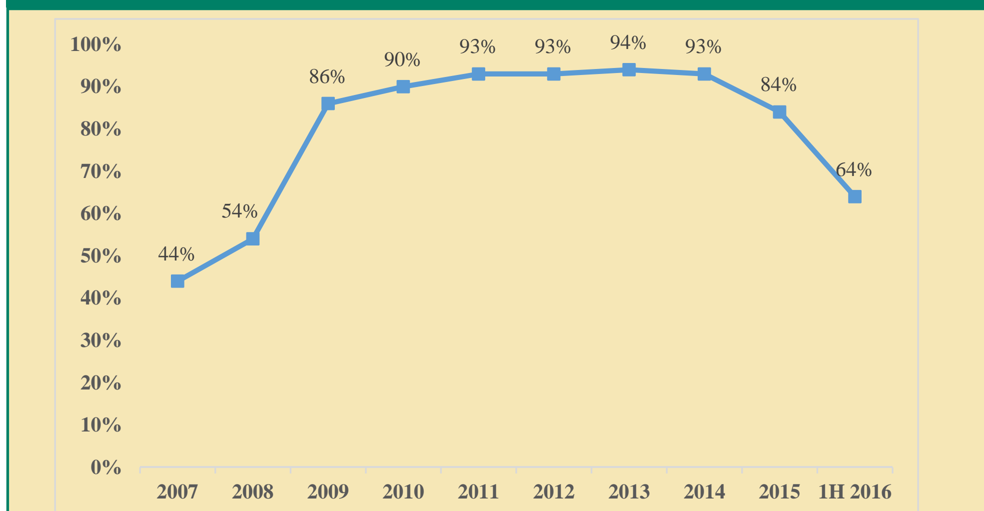
Financial Projections

Both valuation analysts relied on management-prepared projections of future cash flow in order to determine the present value of PetSmart, Inc. During the proceedings, management argued that they succumbed to significant pressure from the board of directors to create "aggressive and ultimately unrealistic" projections.[5]

The petitioner's valuation analysis was based on the assumption that the management projections were reasonable from a financial perspective.[6]

It is important that the valuation analyst develop a comprehensive understanding of any management-prepared financial projections relied on in the valuation. It is recommended that an analyst have an understanding of the purpose of the projections, as well as how the projections were prepared. In certain situations, an analyst may consider normalizing the management-prepared projections if those financial projections appear to be unreasonable.

Figure 1
Percentage of Transactions Subject to Dissenting Shareholder Litigation



Source: *Shareholder Litigation Involving Acquisitions of Public Companies* (Cornerstone Research 2016): 1.

In the instant case, it appears that the petitioner's valuation analyst did not have a comprehensive understanding of management-prepared financial projections. The petitioner's valuation analysis relied on the management-prepared financial projections without any normalization adjustment. Because the court concluded that the management-prepared projections were unrealistic, the court concluded that the petitioner's analyst overestimated the fair value of PetSmart, Inc.[7]

J.P. Morgan Fairness Opinion

The PetSmart, Inc., board of directors knew the management-prepared projections were too aggressive. Because the board was not confident in the management-prepared financial projections, it directed JPM to conduct a sensitivity analysis. The sensitivity analysis provided a fair value range of $65.00 to $95.25 per share.

The intended goal of the sensitivity analysis was to prove the fairness of the transaction price decided between the PetSmart, Inc., board of directors and BC Partners.

The dissenting shareholders argued that the JPM fairness opinion relied on a weighted average cost of capital ("WACC") that was too high. All else being equal, the higher the WACC applied in the DCF method, the lower the indicated value. The valuation decision does not indicate that JPM had intentionally increased the WACC beyond a reasonable level in order to reach a specific value conclusion.

The Judicial Decision

In the *Union Illinois v. UFG* decision, the court concluded that the merger price was the "best evidence of fair value" when the transaction "resulted from a competitive and fair auction, which followed a more-than-adequate sales process and involved broad dissemination of confidential information to a large number of prospective buyers."[8]

Precedence set from the *Union Illinois v. UFG* decision was cited in the *In Re Appraisal of PetSmart, Inc.*, decision.

The court described the PetSmart, Inc., transaction process as being "a robust auction process, where anybody who had an interest in this company had the opportunity to engage with the company and see whether they wanted to buy the company."

Because the auction process included a significant number of buyers and a fair bidding process, the court concluded that the transaction price was indicative of the PetSmart, Inc., stock fair value.[9]

John Douglas Dunmire v. Farmers & Merchants Bancorp of Western Pennsylvania, Inc.

On October 1, 2014, Farmers & Merchants Bancorp of Western Pennsylvania, Inc. ("F&M"), was acquired by NexTier, Inc. The F&M transaction was based on a stock-for-stock basis resulting in a value of $83 per share.

The noncontrolling shareholder petitioners were displeased with the transaction price and the transaction process. That was because, according to the dissenting shareholder petitioners, the transaction was not transacted at arm's length, and the company had not undergone a robust company sale process.[10]

The petitioners' analyst determined the fair value of F&M to be 66 percent greater than the actual transaction price, at $137.97 per share. The respondents' analyst estimated that the fair value of F&M was 8 percent less than the actual transaction price, at $76.45 per share.[11] The following paragraphs provide analysis and discussion of this dissenting shareholder appraisal rights proceeding.

Opinions of Value

The petitioners' analyst concluded a per-share value of $137.97 using a guideline merged and acquired company ("GMAC") method analysis. Using the GMAC method analysis, the analyst observed prices derived from the acquisition of other banks and their corresponding price-to-earnings pricing multiples in order to determine a fair value for F&M. After deriving a price-to-earnings pricing multiple from the transactions, the 2013 net earnings of F&M were multiplied by the corresponding pricing multiple.

The petitioners' analyst also applied a discounted cash flow method analysis (that is, an income approach method) in order to further support the GMAC analysis.

The respondents' analyst weighted these three equally: (1) the capitalized net income method, that is, an income approach method; (2) the GMAC method; and (3) the guideline publicly traded company ("GPTC") method.

A valuation of $76.45 per share resulted from the respondents' analyst use of the income and market approaches listed above.

Because both analysts relied on an income approach that capitalized F&M income based on a one-year period, a capitalized net income analysis was relied on by the court in the appraisal rights proceeding.[12]

Merger Price

In certain past appraisal rights actions, the court has found the merger price to be the "best evidence of fair value" when the transaction "resulted from a competitive and fair auction, which followed a more than adequate sales process and involved broad dissemination of confidential information to a large number of prospective buyers."[13]

In some instances, the merger price may reflect fair value. However, since the instant transaction involved related parties and no robust sale process, the court concluded that the merger price could not be used to determine the fair value of the stock.

Allegedly, the F&M transaction was not between unrelated parties, did not undergo an auction process, and did not involve the dissemination of confidential information to a large pool of prospective buyers. There was evidence that the merger price considered the noncontrolling shareholders, but there was not enough evidence to support the use of merger price as fair value.[14]

Since the court concluded that the sale process did not justify the application of merger price as fair value, other valuation approaches were considered in the judicial determination of fair value.

Guideline Merged and Acquired Company Transactions

The petitioners' analyst relied on a GMAC method analysis in order to estimate the fair value of F&M. The analysis included a comprehensive search of 160 community bank transactions, and the selection of eight guideline transactions that were the most reasonably comparable to F&M.

The petitioners' analyst then multiplied the median price-to-earnings pricing multiple based on the eight transactions, to the estimated 2013 F&M earnings. After the application of adjustments for F&M specific factors, the petitioners' analyst arrived at a value of $137.97 per share.[15]

The court considered the eight guideline transactions to reasonably represent the F&M business operations, but the court expressed other concerns with the transaction analysis. The consideration of the inclusion of transaction synergies is a necessary procedure when using the GMAC method.

In the Chancery Court, it has been established that "in an arm's-length, synergistic transaction, the deal price generally will exceed fair value because target fiduciaries bargain for a premium that includes . . . a share of the anticipated synergies."[16]

In other words, if synergistic value is present in a transaction, then the price is likely too high. In the instant case, the court concluded that inclusion of synergistic values resulted in the application of a higher price-to-earnings pricing multiple.

Determining if synergistic values are present, and if so, what percentage of the merger price includes synergistic value, makes the comparable transaction method difficult to apply. However, if ample evidence supports the conclusion that the transactions were not strategic acquisitions and/or a convincing argument is made to support an adjustment for synergies, then the method could be applicable in an appraisal rights proceeding.

The petitioners' analyst conceded that the observed transaction prices were likely to include synergistic value and that he failed to adjust for the additional synergies in the transactions. Therefore, the court made the decision to disregard the GMAC method.[17]

Appraisal-Related Decision

Because the GMAC method was rejected, the court relied solely on a capitalized net income analysis.

A capitalized net income analysis relies on a single year of earnings and applies a capitalization rate in order to estimate the present value of the subject company. Normalization adjustments may be applied based upon the capital structure of the subject company.

The petitioners' analyst estimated that net income would be the same in 2014 as 2013, while the respondents' analyst estimated the net income of F&M for a period ending in 2015 (post-merger).[18]

The respondents' estimate of net income became the starting point of the court's analysis—after the

court rejected the petitioners' estimate of zero growth between 2013 and 2014.

Capital Asset Pricing Model

Once a long-term growth rate is established, the next step in the capitalized income analysis is to calculate the present value discount rate of the subject interest. The court concluded that the capital asset pricing model ("CAPM") was a reasonable method for determining the present value discount rate.

Both analysts agreed on a risk-free rate based on the yield on a 20-year U.S. Treasury bond and a size risk premium for 9th and 10th decile companies (based upon market capitalization) from the Duff & Phelps, LLC, *2014 Valuation Handbook: Guide to Cost of Capital* ("*Duff & Phelps Handbook*").[19]

However, both parties did not agree on the appropriate equity risk premium ("ERP") for the F&M CAPM estimate.

The petitioners' analyst relied on an ERP derived from an online survey of financial officers and executives, known as the "Duke Study." The Duke Study had never been used in a Delaware dissenting shareholder appraisal proceeding, and there was little evidence to support its application to F&M. Therefore, the court did not allow the Duke Study ERP conclusion to be used for the calculation of the F&M CAPM.[20]

In contrast, the respondents' analyst relied on a supply-side ERP from the *Duff & Phelps Handbook*. Since the supply-side ERP was used in previous Delaware court proceedings, the court relied on it in the F&M CAPM calculation estimate.[21]

The final step in the CAPM was to derive a beta representative of F&M. After the court rejected both analysts' beta estimates, the court selected a beta derived from the banking industry as published in the *Duff & Phelps Handbook*.

Expected Growth Rate

The petitioners relied upon the historical growth of F&M to support the growth rate selection. The court determined that historical growth was too upwardly biased due to overcapitalization in early years.

The respondents selected a growth rate of 3 percent, which considered the strategic plan of F&M. The selected long-term growth rate of 3 percent was used for other mature firms based on prior Delaware Court of Chancery decisions.[22]

The court determined that a 3 percent expected long-term growth rate was applicable to F&M.

The Court's Decision

After an adjustment for excess capital, the court concluded a share price of $91.90 (approximately 11 percent greater than the merger price) by applying the aforementioned income approach.

In this case, the court concluded that (1) the merger was not transacted at arm's length, and (2) the merger was not subject to a robust sale process. Therefore, the court found that the merger price was not an accurate indication of fair value.

In Re Appraisal of SWS Group, Inc.

Stockholders of the SWS Group, Inc. ("SWS"), demanded a statutory appraisal of their shares after the acquisition of SWS. Based on the conclusion arrived at in *In Re Appraisal of Petsmart, Inc.*, it was understood that a sale involving a rigorous sale process may be a reasonable indication of fair value.[23]

In the instant case, the sale process of SWS was not considered to be rigorous, and, therefore, the court concluded that the merger price was not a reliable indication of fair value.

On January 1, 2015, SWS was acquired by Hilltop Holdings, a creditor of SWS. The shareholders of SWS received cash and stock worth $6.92 per share. The dissenting shareholders argued that the transaction was not done in their best interest and demanded an appraisal proceeding.

Both the petitioners and respondents argued against the transaction price. The dissenting shareholders argued that the sale process was flawed, making the transaction price an inaccurate representation of share price. In contrast, the respondents argued that the merger price included synergies, proving the transaction price was too high.

SWS entered into a loan agreement with Hilltop Holdings in 2011, which made it a debtor to Hilltop Holdings. Hilltop Holdings later acquired PlainsCapital, a bank holding company similar to SWS, making SWS a synergistic target for Hilltop Holdings. Prior to the transaction projection, Hilltop Holding's internal projections showed adjustments for the integration of SWS that included cost savings through the reduction of overhead.[24]

There was enough evidence for the court to decide the transaction included synergistic elements and was not an accurate indication of fair value.

Valuation Analysis

The petitioners engaged a valuation analyst who relied on both the DCF method and GPTC method. Placing an 80 percent weighting on the DCF method and a 20 percent weighting on the GPTC method, the valuation analyst arrived at a fair value of $9.61 per share, a value nearly 30 percent greater than the transaction price. One argument for the inflated price was that SWS was "on the verge of a turnaround."[25]

The respondents' valuation analyst relied solely on the DCF method, resulting in a valuation of $5.17 per share (approximately 25 percent below the transaction price). This conclusion was supported by the claims that the synergistic value was incorporated in the transaction price.

Discounted Cash Flow Method

The court considered several valuation methods, but it decided to rely exclusively on the DCF method.

The GPTC method was considered by the court, but is only reliable if the selected companies accurately compare to the subject interest. The court decided that the companies selected by the petitioners' valuation analyst were not comparable to SWS in terms of size, business lines, and performance. The court also decided that identifying guideline companies for SWS would be too difficult, due to the nature of SWS business operations.[26]

The court did not solely rely on either the petitioners' DCF method analysis or the respondents' DCF method analysis. Rather, the court performed its own DCF method analysis after analyzing and accepting specific inputs.

It is generally understood that the DCF method is only as reliable as the projections used in the analysis. It is also generally understood that projections prepared prior to a merger are more reliable than projections produced specifically for litigation purposes.

In the instant case, three-year projections were prepared by management on an annual basis prior to the transaction. The petitioners argued that the projections relied upon for the period analyzed were "downside" projections, when compared to previously prepared projections.[27]

In contrast, management believed that the projections were overly optimistic, since they had never met projections in the past. The petitioners' analyst projected an additional two years past management's projections of straight-line growth, with the guideline companies analysis as part of his basis. Since it was already determined that the guideline companies selected did not properly represent the business model, size, or environment of SWS, the additional two-year period was not included in the court's DCF analysis.

Warrant Exercise

There was also controversy regarding the adjustment for a warrant exercised in 2014 and its effect on the capital levels of SWS. The petitioners argued that the warrant would not have been exercised but for the merger.

According to Section 262 (h) of Delaware General Corporation Law, "the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation, together with interest, if any, to be paid upon the amount determined to be the fair value. In determining such fair value, the Court shall take into account all relevant factors."

After the exercise of the warrant, the shares issued were all used to vote in favor of the merger.[28] This vote created the appearance that the exercising of the warrant was dependent upon the merger.

Because the warrants were issued independently of the merger, the court determined that the warrant exercise was not conditional to the merger and would have been exercised regardless of whether the merger occurred or not.[29]

The petitioners argued that if the exercising of the warrant is considered as part of the SWS operations, then SWS would have had more regulatory capital, requiring an adjustment for $117.5 million. The court's adjustment decision is summarized below.

Regulatory Capital Analysis

In a valuation analysis, an analyst may apply an adjustment for excess or deficient capital. However, if the capital in question is necessary to run the business, then it is not typically considered excess capital, and it is not adjusted.

The petitioners argued that the excess regulatory capital associated with the exercise of the warrants must be accounted for the same way that excess cash is accounted for in a DCF method valuation. In a DCF method valuation, an adjustment for excess/nonoperating cash and equivalents is typically considered.

In the instant case, the extra regulatory capital associated with the warrants was determined to be equivalent to stockholders' equity and not a cash equivalent. Cash associated with the warrants exercised was received in 2011 upon the original warrant agreement, and it should not be adjusted for in 2014.[30]

> "Transactions that do not undergo a robust bidding process involving third parties often do not result in a supportable indication of fair value."

Management projected that the warrant exercise would occur in July of 2016. Because the warrants were exercised before the projections had anticipated, adjustments for the reduction in interest payable over the two years was necessary. This resulted in a reduction of interest expense of $7 million in 2015 and $4.027 million in 2016.[31] This created an increase in net income for the two periods, and, therefore, added value.

The Discount Rate

Both parties agreed that the CAPM was an appropriate method for determining the discount rate of SWS. However, the analysts disagreed on certain CAPM financial variables.

The petitioners' analyst applied a supply-side ERP, which has been considered the "default" method based on recent Delaware litigation, while the respondents' analyst applied the historic ERP.[32]

The court concluded that the supply-side ERP should be applied based on precedence and lack of basis for the historic equity risk premium.

Each analyst also used a different estimate of beta—1.10 for the petitioners and 1.18 for the respondents. The petitioners' beta estimate was based on guideline companies that were previously determined to be insufficiently comparable to SWS.

The petitioners' analyst observed several points of data and concluded a beta based on a median of the data points. In contrast, the respondents' analyst estimated beta by observing stock price changes of SWS over the past two years.

Because the merger discussion between the merger parties was known and knowable during this period, the stock price was likely affected. Therefore, the beta derived over the two-year period prior to the merger transaction was too distorted by the transaction to use in the development of the CAPM.

Despite the lack of comparability between SWS and the selected guideline companies, the beta determined by the petitioners was used in the court's decision.

The final consideration of the CAPM was to determine the amount of the size premium for SWS. Both analysts agreed that the *Duff & Phelps Handbook* was an appropriate reference source for determining a size premium; however, each party used a different market capitalization range in order to determine the size premium.

The court found that neither argument was more persuasive than the other. Therefore, the court relied upon the mean of both size premium estimates.

The Judicial Decision

The fair value of the SWS shares was determined to be $6.38. Because of the value-adding synergies, the court found that the fair value was below the transaction price.

Understanding all aspects of a transaction is an essential procedure when determining if a litigation proceeding should be undertaken. Had the petitioners understood the synergistic value included in the transaction price, costly litigation may have been avoided.

Conclusion

At first glance, the reliance on the transactional merger price appears to be an alternative to an expensive litigation proceeding involving the engagement of valuation analysts. In spite of supporting evidence of a robust sale process and the absence of synergistic value, appraisal rights claims may still proceed. This is because dissenting shareholders are often dissatisfied with the transaction price.

After the examination of several appraisal rights cases in the Delaware Court of Chancery, it appears that a merger price may be considered an indication of fair value in certain cases. However, it should not be assumed that the merger price is consistent with fair value. Transactions that do not undergo a robust bidding process involving third parties often do not result in a supportable indication of fair value.

Even if a transaction is completed at arm's length and involves a robust sale process, other factors are typically considered before reaching a fair value conclusion. Fair value, in dissenting shareholder appraisal rights litigation, does not include synergies, therefore, an adjustment for synergistic value may be made in the determination of fair value.

It is important for an analyst to be aware of synergistic values included in transaction prices when applying a GMAC method analysis. If synergies are included in the merger price, then the generally accepted business valuation approaches should be considered to estimate the subject stock fair value.

Due to the complexities and unique circumstances of mergers and acquisitions, dissenting shareholder appraisal rights proceedings in the Chancery Court will continue to involve valuation analysts.

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Charles Wilhoite delivered a presentation titled, "Financial Expert Support in Dispute Resolution" to the litigation department of Garvey Schubert Barer on June 7, 2017, in Portland, Oregon.

Charles Wilhoite delivered a presentation titled, "Cash is Fine—Inspiring and Receiving Gifts," to the Northwest Planned Giving Roundtable on July 21, 2017, in Portland, Oregon.

Charles Wilhoite delivered a presentation to the Arizona State University law school regarding community property in September 2017.

John Ramirez, vice president in our Portland, Oregon, office and Casey Karlsen, an associate in our Portland office, delivered a presentation at the 47th Annual Appraisal for Ad Valorem Taxation Conference held at Wichita State University on July 26, 2017. The topic of John and Casey's presentation was "Market Approach Methods: Extracting Pricing Data from Market Evidence."

Robert Reilly also delivered two presentations at the Wichita State University Appraisal for Ad Valorem Taxation Conference held from July 23 through 27, 2017. The title of Robert's first presentation was "Income Tax Considerations in Unit Principle Valuations." The title of Robert's second presentation was "Flotation Cost Considerations in Unit Principle Valuations."

Robert Reilly will address the American Society of Appraiser's annual Advanced Business Valuation Conference held in Houston, Texas, on October 10, 2017. The topic of Robert's presentation will be "Intellectual Property Valuation Approaches, Methods, and Procedures."

Encomium

Tim Meinhart, Chicago office managing director, was appointed to the Business Valuation Education Subcommittee of the American Society of Appraisers.

Charles Wilhoite was appointed by Oregon Governor Kate Brown on May 31, 2017, to serve on the seven-member PERS UAL (unfunded actuarial liability) Task Force. The Task Force is charged with designing strategies to eliminate $5 billion of an estimated $22 billion in unfunded actuarial liability associated with Oregon's public employee retirement system.

Charles Wilhoite was featured as "Storyteller-in-Chief" in the July/August 2017 issue of *Oregon Business* magazine.

Kevin Zanni, Chicago office director, was elected to serve as the president of the Business Valuation Association of Chicago.

Delaware Appraisal Rights Proceedings

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Notes:

1. Union Illinois 1995 Investment Limited Partnership v. Union Financial Group Ltd., 847 A.2d 340 (Del. Ch. 2003).
2. "Shareholder Litigation Involving Acquisitions of Public Companies," Cornerstone Research (2016): 1
3. In Re PetSmart, Inc., No. 10782, 2017 WL 2303599 at *2 (Del. Ch. May 26, 2017).
4. Id.
5. Id. at *12.
6. Id. at *22.
7. Id. at *35.
8. Union Illinois 1995 Investment Limited Partnership v. Union Financial Group Ltd., 847 A.2d 340.
9. In Re PetSmart, Inc., 2017 WL 2303599 at *40.
10. John Douglas Dunmire v. Farmers & Merchants Bancorp of Western Pennsylvania, Inc., No. 10589-CB, 2016 WL 6651411 at *1 (Del. Ch. Nov. 10, 2016).
11. Id.
12. Id.
13. Id. at *7.
14. Id.
15. Id. at *8.
16. Id., citing Olson v. EV3, Inc., No. 5583-VCG, 2011 WL 704409 at *10 (Del. Ch. Feb. 21, 2011).
17. Id. at *9.
18. Id. at *11.
19. Id. at *11-12.
20. Id. at *12.
21. Id. at *13.
22. Id. at *15.
23. In Re SWS Group, Inc., No. 10554-VCG, 2017 WL 2334852 at *1 (Del. Ch. May 30, 2017).
24. Id. at *5.
25. Id. at *8.
26. Id. at *10.
27. Id. at *11.
28. Id. at *13.
29. Id.
30. Id. at *14.
31. Id. at *16.
32. Id.

Ben Duffy is an associate in our Atlanta practice office. Ben can be reached at (404) 475-2326 or at brduffy@willamette.com.