

## Fairness Opinions

### *Wall Street Bankers Are Neither the Best Nor Only Resource*

The *Wall Street Journal* reported recently that the NASD, the main self-regulatory body for brokerage firms, has begun an inquiry into possible conflicts of interest by Wall Street bankers who provide fairness opinions on the value of mergers and acquisitions. As a result of this inquiry, Wall Street bankers could face new rules that require them to disclose any financial incentives that they have for pushing the deal through to completion.

Fairness opinions are typically issued not only in mergers and acquisitions, but also in initial public offerings, takeovers and spinoff of company units. As reported in the *Wall Street Journal*, "... [fairness opinions] have become a money-making sideline for Wall Street that can also lead to investment-banking work. The opinions are sometimes done by investment bankers whose firms have no other role in the deal. But they also can be prepared by bankers from the same firm that suggested a deal take place and that stands to collect a 'success fee' that is a percentage of the deal's price at completion."<sup>1</sup>

According to the article, those familiar with the inquiry noted that greater disclosure would require investment bankers to be responsible for determining the fair value of a transaction independently before certifying to management or the board of directors that the deal is fair.

Given this news, we thought it would be interesting to reprint here a Letter to the Editor written by Chris Mercer that appeared in the September 23, 1985 issue of *Forbes* entitled "All's fair in love and ...?":

*Sir: In 'Fairness for hire' (July 29) you discussed the conflicts faced by investment bankers in rendering fairness opinions. There are numerous business valuation firms that routinely value companies and evaluate transactions from the point of view of various shareholder factions. They do*

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**See Table of Contents and Order Form on pages 6 & 7**

<sup>1</sup> Ann Davis, "NASD Scrutinizes Conflicts in Bankers' "Fairness Opinions," *The Wall Street Journal On-Line*, [http://online.wsj.com/article\\_print/0,,SB108681702104033099,00.html](http://online.wsj.com/article_print/0,,SB108681702104033099,00.html)

*not expect to manage the net underwriting. They get used, for the most part, in 'small' transactions. The investment banking community has successfully perpetuated the concept that only an investment banking firm can render a fairness opinion in 'big' deals. After all, what's fair is fair.*

As you can read from the letter, Mercer Capital has been issuing fairness opinions in both big and small transactions for many years. To discuss your needs in confidence, please do not hesitate to give us a call at 901.685.2120 or 502.585.6340 or e-mail us at [mcm@mercercapital.com](mailto:mcm@mercercapital.com). ♦

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**Resources on the topic of Fairness Opinions from Mercer Capital's website:**

**Fairness Opinions** (*The Transaction Advisor*, Volume 5, No. 3, 2002)

**The Importance of Fairness Opinions in Transactions Involving ESOPs**  
(*ESOPVal.com*, Spring/Summer 1999)

**What's Fair?: *The Ins and Outs of Fairness Opinions*** (speech given to the American Society of Appraisers, New York City Chapter, May 8, 1998)

**The Importance of Fairness Opinions in Transactions** (*Bizval.com*, Vol. 9, No. 1, 1997)

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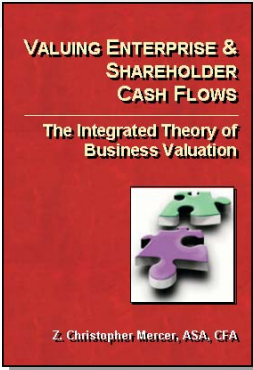
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# The Integrated Theory of Business Valuation

Z. Christopher Mercer, ASA, CFA



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Practical Proof: DCF = Gordon Model  
Intuitive Impact of Reinvesting Cash Flows  
Revisiting the Gordon Model  
The Core Business vs. Reinvestment Decisions  
Core Earnings Growth ( $g_e$ ) vs. Analysts' Expected Earnings Growth ( $g^*$ )  
Net Income vs. Net Cash Flow  
Multiple  $g$ 's and One  $r$  for the Gordon Model  
Focus Again on  $g_e$  – the Long-Term Expected Growth Rate in Earnings  
Focus Again on  $g^*$  – the Long-Term Growth Rate in Cash Flow  
The Relationship between Net Income and Net Cash Flow  
Does  $r$  Relate to Net Income or to Net Cash Flow?  
Practical Observations from the Very Basics of Value  
Conclusion

### Chapter 2: Organizing Principles of the "World of Value"

Introduction  
The World of Value  
Grapes of Value  
Clarity Comes Slowly  
The Principles Crystallize  
The Organizing Principles  
G – The Principle of GROWTH and Time  
R – The Principle of RISK and REWARD  
A – The Principle of ALTERNATIVE Investments  
P – The PRESENT Value Principle  
E – The Principle of EXPECTATIONS  
S – The Principle of SANITY (and Rationality and Consistency)  
The Basket for Grapes: The Principle of Knowledge  
Concluding Comments

### Chapter 3: The Integrated Theory of Business Valuation

Introduction  
The Gordon Model  
Initial Views of the Levels of Value  
The Marketable Minority Interest Level of Value  
The Financial Control Level of Value  
Financial Control Premium  
Prerogatives of Control (Introduction to the Minority Interest Discount)  
The Minority Interest Discount  
Strategic Control Level of Value and the Strategic Control Premium  
Marketability Discount Applicable to Controlling Interests of Companies  
Enterprise Levels vs. the Shareholder Level of Value  
The Nonmarketable Minority Level of Value  
The Marketability Discount  
The Integrated Theory of Business Valuation  
Conclusions

### Chapter 4: The Adjusted Capital Asset Pricing Model

Introduction  
The Adjusted Capital Asset Pricing Model  
Historical Evolution of ACAPM  
Overview of the Capital Asset Pricing Model (CAPM)  
Developing the Adjusted Capital Asset Pricing Model (ACAPM)  
Ongoing Earning Power and Theoretical/Practical Comments  
The Components of the ACAPM  
The ACAPM Capitalization Rate AND Sensitivity  
Level of Value and Earnings Stream  
The ACAPM and Shareholder Level Valuations  
Judgment and Reasonableness and the ACAPM  
Conclusions

### Chapter 5: Adjustments to Income Statements: Normalizing and Control Adjustments

Introduction  
The Integrated Theory and Income Statement Adjustments  
Two Types of Income Statement Adjustments  
Income Statement Adjustments and the Relevant Discount Rate  
Normalizing Adjustments to the Income Statement  
Normalizing Adjustments Illustrated  
Control Adjustments to the Income Statement  
Potential Value Impact of Earnings Adjustments  
The Nature of Control Premiums  
Control Premiums and Fair Market Value  
Control Premiums: Valuation Results, Not Value Drivers  
Conclusion

### Chapter 6: Fundamental Adjustments to Market Capitalization Rates

Introduction  
The Grapes of Value Reviewed  
A Conceptual Overview of Fundamental Adjustments  
Risk Differentials Cause Fundamental Adjustments  
Expected Growth Differentials Cause Fundamental Adjustments  
Fundamental Adjustments by Another Name  
Practical Techniques for Developing Fundamental Adjustments  
Quantifying Fundamental Adjustments (from the Median of Mean)  
Using the ACAPM  
Compare Publico and Privateco  
Estimate Long-Term Growth for Public Group  
Determine a Fundamental Adjustment Using ACAPM  
Application of the Fundamental Adjustment  
Adjusting Equity-Based Fundamental Adjustments for Total Capital Methods  
Using a Factor Other Than the Median or Mean to Determine the Fundamental Adjustment  
Conceptual Illustrations of Fundamental Adjustments  
"Marketability Discounts" for Controlling Interests?  
The Literature re Fundamental Adjustments  
Conclusion

### Chapter 7: The Quantitative Marketability Discount Model (QMDM)

Introduction  
Conceptual Overview of the QMDM  
Begin With Enterprise Value  
Nonmarketable Minority Interest Values  
Enterprise and Shareholder Values  
Conceptual Illustration of Chance  
Practical Illustration of Chance  
General Assumptions of the QMDM  
The Five QMDM Assumptions  
The QMDM Assumptions in Perspective  
The Base Case for the QMDM  
Base Case Conceptual Overview  
Base Case Practical Illustration  
Base Case in the QMDM Spreadsheet  
Initial Questions about the Base Case  
Simulating the Thinking of Hypothetical Investors  
Conclusion

### Chapter 8: Fair Market Value vs. the Real World

Fair Market Value and the Integrated Theory  
Fair Market Value Defined  
Fair Market Value vs. the Real World  
The Elements of Fair Market Value  
Conclusion

### Chapter 9: Economic Value Added, Economic Profit and Market Value Added

Introduction  
Economic Value Added  
Definitions  
EVA is a Function of Return on Equity (ROE)  
Market Value Added is a Function of EVA and ROE  
Basic Assumptions Review  
The Value of a Business  
The Value of the Business Plan  
EVA and the Integrated Theory  
Implications for Business Owners and Their Advisers  
Conclusion

### Chapter 10: The Levels of Value in Perspective

Levels of Value: Beginnings until 1990  
Levels of Value: 1990 -1995  
Levels of Value: 1995 to the Present  
Quantitative, Rate of Return Analysis and Marketability Discounts  
Conclusion

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