



**MERCER
CAPITAL**

VALUE MATTERS™

The Complimentary Electronic Newsletter for Attorneys and Other Professional Advisors to Business

Volume 2005 -12 • December 28, 2005

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Second Fairness Opinions

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Recent headline-grabbing corporate scandals have focused attention on the importance of independence for public accountants. In a transaction environment, corporate governance best practices emphasize not only the independence of auditors but also the financial advisor issuing a fairness opinion. Since the landmark court case, *Smith v. Van Gorkom* (Delaware, 1985), fairness opinions have become quite commonplace in corporate control transactions. The purpose of the fairness opinion is to determine if the price being offered to shareholders is within a range of values that would be considered "fair" from a financial point of view.

Many investment banking firms that are hired to complete a transaction are frequently retained to provide a fairness opinion on the same transaction. This creates obvious conflicts of interest if any of the following conditions are met:

- The investment banking firm has a financial interest in the company being transacted;
- The investment banking firm has an existing relationship with the company or other parties involved in the transaction; or,
- The fee to be paid the investment banking firm is in any way contingent upon the successful completion of the transaction.

Although the third item generally receives the most attention, the National Association of Securities Dealers (NASD), in November 2004, proposed regulations that would serve to address all three items. Among other things, the new rule would require members (firms issuing fairness opinions) to:

- 1) disclose in any fairness opinion appearing in any proxy statement any significant conflicts of interest, including, if applicable, that the member has served as an advisor on

ONE SESSION REMAINING IN MERCER CAPITAL'S COMPLIMENTARY TELESEMINAR SERIES

Is Your Business Ready for Sale?™

Presented by Z. Christopher Mercer, ASA, CFA

In this complimentary teleseminar series, we share the lessons we've learned in valuing and counseling hundreds of business owners. Spend a few hours with us and you'll be focused every day on those activities and metrics that will position your or your client's business as "ready for sale" so that when the opportunity arises, you will be positioned to take full advantage of it!

Session Three is scheduled for **Wednesday, January 18 at noon - 1:00pm central time**. In this session, we will reveal your "Pathways to Liquidity," or an overview of the markets for privately held businesses. We'll discuss what alternatives for liquidity exist for most businesses, who the buyers are for businesses of various sizes, what are they looking for, particularly in the context of "Is Your Business Ready for Sale," why private equity groups are so important to you, and why "multiples paid" tend to congregate in certain ranges for certain industries.

If you missed either of the first two sessions, you can order them individually on CD for only \$49 each, or you can order the entire teleseminar series on CD for only \$99..

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the transaction in question, and the nature of compensation that the member will receive upon the successful completion of the transaction; and,

- 2) develop specific procedures that members must follow to identify and disclose potential conflicts of interest in rendering fairness opinions.

However, this rule is not yet final, and meanwhile shareholders and boards of directors may be relying upon fairness opinions that may are not truly independent. An example of this was explored in a New York Times article dated August 21, 2005, entitled “And They Call This Advice?” Three fairness opinions were rendered for the merger of Providian Financial Corporation with Washington Mutual. Two of the three firms issued opinions recommending that the shareholders of Providian reject the proposed deal. The advisor recommending approval provides advisory and other services to issuers of securities, such as the companies involved in the transaction, while the two firms recommending rejection are independent and receive fees solely from institutional investors.

Fairness opinions that are truly fair and independent benefit not only shareholders, but boards of directors and management as well. A board member has a fiduciary responsibility to the company’s shareholders. When the board solicits an opinion from a firm with conflicting interests, questions about their intent and motivations of the parties inevitably arise. Often, upper levels of management receive lucrative severance packages as a result of control transactions. Other times, significant pay raises and benefits for remaining members of management are negotiated into the deal. In these instances, management and the investment banking firm have a similar interest in seeing the transaction go through. The investment banking firm may have been hired by the managers, and the managers want the deal to be successful; therefore, the investment banking firm wants the deal to be successful. In cases like this, a “pro-management” decision is more likely than one that is in the best interest of the shareholders.

Boards of directors would often be well-advised to retain a truly independent firm to issue a “second” fairness opinion in such cases. Some opponents argue that the firm issuing the second opinion could gain the opportunity to replace the incumbent investment banking firm, thereby giving the second firm a vested interest in the outcome of the opinion. Others argue that the incumbent firm may be discouraged from introducing future investment opportunities to the company under consideration. Both of these possible problems, however, can be solved by hiring a firm that does not compete with the incumbent firm. Mercer Capital does not compete with large investment banking firms, and offers a solution for an independent and fair opinion.

A common misconception is that only large investment banking firms have the experience and ability to render a fairness opinion for large, multi-million dollar or even billion dollar, corporate transactions. This is not the case. At Mercer Capital, we have issued independent fairness opinions for a wide range of industries and purposes, and also have experience dealing with larger, public corporations.

In summary, the effectiveness of a fairness opinion for a corporate control transaction depends on who renders it, their relationship with all involved parties, and their own interest in the outcome of the pending transaction. A “second” fairness opinion issued by a truly independent advisor will benefit all those involved in a proposed transaction.



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ATTORNEYS

Mercer Capital Can Help You Help Your Clients

Mercer Capital has developed a presentation specifically for attorneys that you and your colleagues cannot afford to miss: *Buy-Sell Agreements, The Do's and Don'ts*. We explore the topic of buy-sell agreements from a business appraiser's perspective, highlighting those issues that typically get your clients into trouble.

In this presentation, you will gain insight into the folly of fixed-price or formula pricing, the different appraisal mechanisms, common misunderstandings that can end up big money issues, and, of course, we share insights into the pitfalls of buy-sell templates.

This presentation can help you help your clients and it's to the point - approximately 30 minutes in length (there is also an hour-long version if that better suits your needs). Depending upon schedules, delivery options are in-person or via webinar.

Contact Barbara Price at 901.685.2120 or priceb@mercercapital.com for a sample audio clip from our most recent presentation and to schedule a presentation to your firm today.

COMING SOON

Buy - Sell Agreements: The Do's and Don'ts

*A New Book from Mercer Capital,
Coming in the First Quarter of 2006*

Mercer Capital has reviewed hundreds of buy-sell and other shareholder agreements, and we want to share our "lessons learned" with you. We do not offer legal opinions or guidance, but instead provide a list of things to watch out for and why they are important. Written for business owners, attorneys, CPAs, insurance providers, as well as other business appraisers, the book powerfully illustrates the valuation consequences of badly-drafted agreements.

To be notified of the publication date and qualify for the special pre-publication discount, email Barbara Price at priceb@mercercapital.com. Please type "Buy - Sell" in the subject line, and be sure to provide your name and address in the message.

ANNOUNCING MERCER CAPITAL'S E-BOOK LIBRARY

Title	Description	Investment	Release Date
Valuing Shareholder Cash Flows: Quantifying Marketability Discounts	<i>Quantifying Marketability Discounts</i> has been updated and is now offered as an e-book. Titled <i>Verifying Shareholder Cash Flows: Quantifying Marketability Discounts - 2005 E-Book</i> , this edition provides a brand new chapter which discusses each of the five assumptions of the QMDM in depth. As a bonus, when you purchase the e-book, you will also receive the <i>QMDM Companion</i> , the latest edition of the Quantitative Marketability Discount Model in spreadsheet format. We plan to continually add content to this e-book, and as a purchaser, you will receive this content free-of-charge when it becomes available.	\$95.00	<i>Currently Available</i>
Valuing Financial Institutions	We are responding to requests to put this book back into print and we are doing so as an e-book	\$65.00	<i>Currently Available</i>
Valuation for Impairment Testing	The first SFAS 142 valuation resource for CFOs and auditors. Also available in printed form at www.mercercapital.com	\$45.00	<i>Currently Available</i>
Are S Corporations Worth More Than C Corporations?	An e-booklet that adds to the S Corp vs. C Corp. debate	Complimentary	<i>Currently Available</i>
Embedded Capital Gains	Mercer Capital's latest publication	\$19.95	<i>Currently Available</i>

Visit our website at www.mercercapital.com for more information or to download an e-book.

MERCER CAPITAL ON THE ROAD

January 25, 2006

“Buy - Sell Agreements”

Firmwide Presentation:

Glankler Brown

Memphis, Tennessee

Z. Christopher Mercer, ASA, CFA

May 2, 2006

Philadelphia Estate Planning Council

Annual Seminar

Philadelphia, Pennsylvania

Z. Christopher Mercer, ASA, CFA

The professionals of Mercer Capital have a great deal of experience speaking to industry and professional groups across the nation on topics such as:

- Buy-Sell Agreements
- The Integrated Theory of Business Valuation
- Is Your Business Ready for Sale?TM
- Purchase Price Allocation
- Valuation of Employee Stock Options
- Litigation Support and Expert Testimony
- Valuation of Privately Held Businesses, Partnerships, or LLCs
- Financial Institution Valuation
- ESOP Valuation

To book a Mercer Capital professional as a speaker at your next conference or CLE/CPE meeting, please contact Barbara Walters Price at priceb@mercercapital.com.

A GENTLE PLUG FOR OUR FIRM

MERCER CAPITAL is a business valuation and investment banking firm serving a national and international clientele. Our reputation for excellence is based on an ability to solve complex financial problems expeditiously. We convert over 20 years of experience, including thousands of assignments, into solutions for the issues of today.

CORPORATE VALUATION. Mercer Capital provides a broad range of independent valuation and financial advisory services, including:

- Dispute Analysis Services and Expert Testimony
- Valuation for Corporate Tax Matters
- Valuation for Corporate Income Tax Issues
- Valuation for ESOPs
- Purchase Price Allocations
- Valuation of Employee Options
- Goodwill Impairment Testing
- Valuation of Intangible Assets
- Fairness Opinions

INVESTMENT BANKING. Mercer Capital's investment banking division specializes in providing merger and acquisition services to sellers or buyers of private businesses or public companies divesting divisions and subsidiaries. In addition, we assist clients in industry consolidations, roll ups, and refinancings.

**INTERNET COMMERCE: OBTAIN PROPOSALS TO VALUE YOUR
COMPANY, BANK, FLP OR LLC VIA OUR WEBSITE**

The cost of your time and delays in obtaining proposals has just gone down. Use one of the PROPOSAL REQUEST FORMS on our website.

Many of your colleagues have already used our PROPOSAL REQUEST FORMS and are impressed by the decrease in transactional overhead and the increased ease in obtaining actionable proposals for their clients. We are pleased to be doing business with them. Try it yourself! Visit our website and provide us with the pertinent information via this form, and we'll prepare a proposal and deliver it to you via e-mail, fax or USPS. Complete confidentiality is assured.

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Mercer Capital's
Complimentary Teleseminar Series

Is Your Business Ready for Sale?TM

Presented by Z. Christopher Mercer, ASA, CFA

ONE SESSION REMAINING

January 18, 2006

Noon - 1:00pm (Central Standard Time)

If you missed either of the first two sessions (November 2 or December 14), you can purchase them on CD for only \$49 each, or you can purchase the entire teleseminar series on CD for only \$99. The CDs will be mailed to you shortly after each teleseminar.

RECAP OF SESSION ONE: "A CALL TO ACTION"

Session One is a call to action. After listening to this session, business owners interested in selling their business now or in the future as well as their professional advisers will understand:

- Why the topic, Is Your Business Ready for Sale?TM, is so important today
- Your business will sell, one way or another, and why you should plan for that transaction
- Your business is an investment and should be thought of as an investment, not a paycheck
- The dynamics of business value and growth
- The financial, operational and leadership characteristics of a business that is ready for sale

And, for those business owners who are buyers of businesses, we ask the question: "Is this business ready to buy?"

RECAP OF SESSION TWO: FOCUS ON "READY"

For those of you who missed this session, it was packed full of information that is actionable and applicable to running your business every day in a manner that increases its value to a potential buyer. The listener was treated to several "take-aways" or bits of information that no one else is telling you that you can use to enhance the value of your business. The session contained the following information:

Part I: Are You Ready for the Next Phase of Your Life?

- If you are 50 years old or older, we're talking to you
- The possibilities
- How to reach that next phase of your life

Part II: Leadership in the form of the acronym "M O S E S" ... or ...

- **(M)**anagement -- The responsibilities of effective managers and effective leaders
- **(O)**versight -- Why an active board is so important and the responsibilities of a good board
- **(S)**trategic Direction -- Why long strategic plans are a waste of time; how to develop and act upon a strategic plan that will enhance the value of your business
- **(E)**mployees -- How to best utilize your employees
- **(S)**tock Considerations -- Your business is not ready to sell unless the stock of your company is placed where it needs to be placed in the event of a sale

Part III: Five things to focus on every day in the acronym "R E A D Y" ... or ...

- **(R)isk** -- The important risks you should be focused on in relation to your business as well as a hidden risk many people never think about
- **(E)arnings or EBITDA** -- a significant amount of time was devoted to the subject of earnings. EBITDA was defined; why EBITDA is so important and how buyers assess it; the pitfalls of "recasting" earnings; the ways buyers and appraisers develop values based on multiples of EBITDA; and two practical, but often, overlooked ideas that business owners can implement today to increase their earnings
- **(A)bility, Attitude, Aptitude, and Activity** -- The importance of having the right people in your organization and customer service measures
- **(D)rivng Growth** -- 7 rules for growth: 1) sense of purpose; 2) understanding of the marketplace, 3) building an effective growth planning system, 4) customer-driven processes, 5) the power of technology, 6) attract and keep the best and the brightest, and 7) always look to the future. Specific examples of how a business owner can use each of the growth strategies to their advantage.
- **(Y)ear-to-Year Comparisons** -- Why looking at the financial performance of your company over a long period of time is important; what to look at and what private equity firms and other potential buyers look for.

Part IV: Putting It All Together

- The "Is Your Business Ready for Sale?™" Audit Worksheet

Questions answered in the session included:

- Who picked 65 as the mandatory "retirement" age anyhow?
- Why is succession planning so hard for so many business owners?
- How many businesses will transact in the next ten years or so?
- What risk is so important to focus on yet so often ignored?
- Why do private equity groups buy some businesses and not others?
- What one simple thing can you do today to increase your earnings and your margins?
- Why should the business owner be wary of "recasting" earnings?
- What do you do when an unexpected offer for your business arrives?
- What was the life-changing advice of Wally Lowenbaum and how can it make a difference in your business?
- How do you assess the strengths and weaknesses of your business today to enhance its value to an outside buyer?

REMINDER OF THE FINAL SESSION IN THIS TELESEMINAR SERIES

Session Three is scheduled for Wednesday, January 18 at noon - 1:00pm central time. In this session, we will reveal your "Pathways to Liquidity," or an overview of the markets for privately held businesses. We'll answer the questions:

- What alternatives for liquidity exist for most businesses?
- Who are the buyers for businesses of various sizes?
- What are they looking for, particularly in the context of "Is Your Business Ready for Sale?"
- Why are private equity groups so important to you?
- Why do "multiples paid" tend to congregate in certain ranges for certain industries?

Is Your Business Ready for Sale?TM **Teleseminar Registration Information**

Register Today for this **complimentary teleseminar series** and/or purchase the entire series on CD using our secure ordering system at www.mercercapital.com/readyforsale.html.

If you are unable to attend the teleseminars or wish to have the information available to you at any time, you can purchase the teleseminar series on CD for only \$99. Shortly after each teleseminar, a CD will be mailed to you.

If you would like to send copies of this teleseminar series on CD to clients and/or friends, contact Barbara Walters Price at priceb@mercercapital.com for information on volume discounts.

You will receive a confirmation after your order. And, if attending the teleseminars, you will receive dial-in instructions several days before the scheduled teleseminar. Also, handout material will be e-mailed to you directly prior to the teleseminars.

SESSION THREE: JANUARY 18, 2006 -- "PATHWAYS TO LIQUIDITY"

Register today via the web at
www.mercercapital.com/readyforsale.html
or by calling
Barbara Price or Matt Washburn at 901.685.2120