

Hot Topics in Estate Planning & Valuation

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About MPI

- MPI is a national consulting firm founded in 1939, specializing in business valuations, litigation support and corporate advisory work. We have delivered thousands of financial opinions to business owners, attorneys, accountants, wealth advisors and other fiduciaries across a wide variety of industries.
- Our sweet spot has traditionally been closely held or family-owned companies in the small and middle markets, but our clients' range in size from several million-dollar revenue businesses to multi-billion-dollar global enterprises.
- We are known and trusted by our long-time clients and their advisors on their most sensitive financial and tax matters.
- MPI clients can be assured that they will receive high quality service, a comprehensive, professional and persuasive work product, and the benefit of decades of collective experience and institutional knowledge.
- MPI has offices in Chicago, Dallas, New York, Philadelphia, Princeton (the corporate headquarters), San Francisco, Seattle, and Westport.

Diversified Valuation & Advisory Services

Business Appraisals

- Estate, Gift, Income Tax Valuations
- Restricted Stock / Blockage Studies / Discount Studies
- Corporate Planning / ESOP Valuations / Buy-Sell Agreements

Litigation Services

- Commercial Litigation / Damages / Fraud Investigations
- Matrimonial Litigation / Asset Tracing
- Shareholder Disputes / Contract Disputes / Forensic Accounting

Corporate Advisory + M&A

- Evaluation of Strategic Alternatives / Sale-Merger Valuations
- Buy-Side + Sell-Side M&A
- Fairness Opinions

Financial Reporting

- Purchase Price Allocations / Goodwill Impairment Testing
- Equity-Based Incentive Compensation
- Portfolio Company Valuations / Intangible Asset Valuations

Experience & Capabilities, page 1

- Closely Held Operating Companies / Family Businesses
- Partnerships & LLCs: Real Estate / Liquid Assets / Artwork / Exotic Cars
- Fractional Interests in Real Estate / Artwork
- Preferred Freeze Partnerships
- Intrafamily Notes
- Private Equity / Hedge Fund LP Stakes
- Vertical Slice Planning for Principals of Hedge Funds, Private Equity and Venture Firms
- Derivative Contracts on Carried Interest, Other Assets
- Pre-IPO Stock
- Large Blocks of Publicly Traded Stock / Restricted Stock

Experience & Capabilities, page 2

- Options and Derivative Instruments
- Charitable Gifts of Private Investment Fund Interests, Highly Appreciated Assets, Bitcoin, Other
- Cryptocurrencies & Blockchain Companies
- Remainder & Income Interests in Trusts
- Guarantee Fees
- Start-Up / Early Stage Company Stock
- Royalty interests (music, books, plays, etc.)
- Litigation Claims
- Rollover Equity from M&A Deal

What Drives the Valuation Need?

- Estate Tax (706) Filing; Gift Tax (709) Filing
- Intrafamily Sales / Sales to Trusts / Asset Swaps
- Tax Controversy / IRS Audit Consulting
- Expert Witness Testimony
- Charitable Giving / Charitable Deductions
- Buy-Sell Triggering Events
- Partner Buy-Ins, Buy-outs, Equity Grants
- Establishing Preferred Freeze Partnerships
- Forgiveness of Notes, Interests in Trusts
- Marital Dissolution / Pre-Nuptial Agreements
- Shareholder Disputes / Divorce / Buyouts
- Exit Tax (Expatriation)
- FIRPTA Tax

Industries / Specialties

- Real Estate
- Professional Sports Franchises
- RIAs / Hedge Funds / Private Equity / VC
- Carried Interest Planning
- Healthcare / Biotech / Pharma
- Construction
- Manufacturing & Distribution
- Auto Dealerships
- Food & Beverage, Beer & Wine
- SaaS companies
- Many other niche industries



Hot Topics

Key Areas of Interest for Estate Planners

Hot Topics – Section 2036

- Be Proactive to Avoid Section 2036 Challenges
 - Powell decision has led many law firms to separate investment powers and distribution powers, taking all distribution/liquidation/dissolution powers away from G1
 - Ensure partnerships have significant and legitimate non-tax reasons for operating
 - Consider hard-wiring non-tax reasons into partnership agreements and enhancing business purpose language
 - What else can be documented at formation?
 - Distribution policy; investment policy; partnership strategy; management succession; standards/guidelines for cash management and asset allocation; etc.
 - Partnership agreements should be negotiated at inception; all parties should have separate counsel; parties should treat these arrangements like they would a business arrangement between third parties.
 - Can G1 dispose of all interests in entity (more than 3 years before death)?
 - Can the entity be terminated more than three years before death? (subject to income tax considerations)
 - References: Bongard (bad); Powell (bad); Purdue (good)

Hot Topics – Formula Clauses

- Formula Clauses Accepted in Court
 - Allocation Based on Finally Determined Value: Allocation between taxable and non-taxable transferees (e.g., shares split between a trust and a charity depending on finally determined value) (Christiansen, Petter)
 - Per Greenbook, IRS not a fan...
 - Assignment of a Dollar Amount of Shares: The assignment is documented as the transfer of that number of shares with a fair market value as finally determined for federal gift tax purposes equal to \$____ (Wandry)
 - IRS issued a notice of non-acquiescence
 - Not generally found in commercial transactions
 - Consider administrative burden on taxpayers; requires ongoing coordination
 - Price Adjustment: Sale price adjusted if fair market value of shares is finally determined to be more or less than \$____ (King)
 - Analogous to post-closing adjustments in commercial transactions
 - Common for planners to inject a King clause when the consideration is at least partially in the form of a note; the face value of the note is adjusted.
 - A combination Wandry/King clause can be useful.

Hot Topics – GRATs

- IRS increasingly auditing GRATs; taking hard line on operational issues
 - Do the terms comply with 2702?
 - Has the GRAT been operated in accordance with its terms?
 - Have the assets contributed to the GRAT been valued properly and in good faith?
 - Stale appraisals or poor-quality appraisals could lead IRS to conclude that the grantor's retained interest is not a qualified annuity interest (see CCA material later herein).
 - Is a consistent valuation method being used for the initial valuation, for in-kind annuity payments and for substitutions?
 - Have annuity payments been made timely? 105-day window

Hot Topics – Qualified Appraisals, page 1

- Qualified Appraisals – What do the regulations say?
 - 26 CFR § 301.6501(c)-1(f)(3)
 - Submission of appraisals in lieu of the information required under paragraph (f)(2)(iv) of this section. The requirements of paragraph (f)(2)(iv) of this section will be satisfied if the donor submits an appraisal of the transferred property that meets the following requirements -
 - (i) The appraisal is prepared by an appraiser who satisfies all of the following requirements:
 - (A) The appraiser is an individual who holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis.
 - (B) Because of the appraiser's qualifications, as described in the appraisal that details the appraiser's background, experience, education, and membership, if any, in professional appraisal associations, the appraiser is qualified to make appraisals of the type of property being valued.
 - (C) The appraiser is not the donor or the donee of the property or a member of the family of the donor or donee, as defined in section 2032A(e)(2), or any person employed by the donor, the donee, or a member of the family of either; and

Hot Topics – Qualified Appraisals, page 2

- (ii) The appraisal contains all of the following:
 - (A) The date of the transfer, the date on which the transferred property was appraised, and the purpose of the appraisal.
 - (B) A description of the property.
 - (C) A description of the appraisal process employed.
 - (D) A description of the assumptions, hypothetical conditions, and any limiting conditions and restrictions on the transferred property that affect the analyses, opinions, and conclusions.
 - (E) The information considered in determining the appraised value, including in the case of an ownership interest in a business, all financial data that was used in determining the value of the interest that is sufficiently detailed so that another person can replicate the process and arrive at the appraised value.
 - (F) The appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.
 - (G) The valuation method utilized, the rationale for the valuation method, and the procedure used in determining the fair market value of the asset transferred.
 - (H) The specific basis for the valuation, such as specific comparable sales or transactions, sales of similar interests, asset-based approaches, merger-acquisition transactions, etc.

Hot Topics – Carried Interests

- IRS Statement on Carried Interest Valuation
 - Many taxpayers own “carried interest” or “promote” as a result of working for a private equity firm, hedge fund sponsor, venture capital firm, or real estate manager.
 - These interests are often “granted” or “issued” on or about the date the fund launches or has a final closing. Due to Rev. Proc. 93-27 & Rev. Proc. 2001-43, the receipt of these “profits interest” are not a taxable event for income tax purposes.
 - A core “play” in the “estate planning playbook” for these taxpayers is to transfer the carry into a trust at the inception of the fund.
 - Some taxpayers and tax advisors have argued that these revenue procedures mean that a profits interest has zero fair market value at issuance, making it the perfect estate planning asset.
 - Clifford Warren of the IRS Office of Associate Chief Counsel (Passthroughs and Special Industries) spoke at the USC Gould School of Law Tax Institute in early 2022:
 - “One thing that is crystal clear is that [Rev. Proc. 93-27] is not applicable generally to valuing carried interest...On the day you get that carry, even though you have zero right to proceeds...that thing is going to be worth tens of millions of dollars today, potentially...No, you’re not taxed under income tax at that point. But if you were to gift that carry and claim it has a zero fair market value under the revenue procedure, that’s a fight we would love to take.”

A low-angle, black and white photograph of several modern skyscrapers reaching towards a dark, cloudy sky. The perspective creates a sense of height and scale, with the buildings' facades showing a grid of windows.

Latest Observations from IRS Audits

Latest Observations from IRS Audits

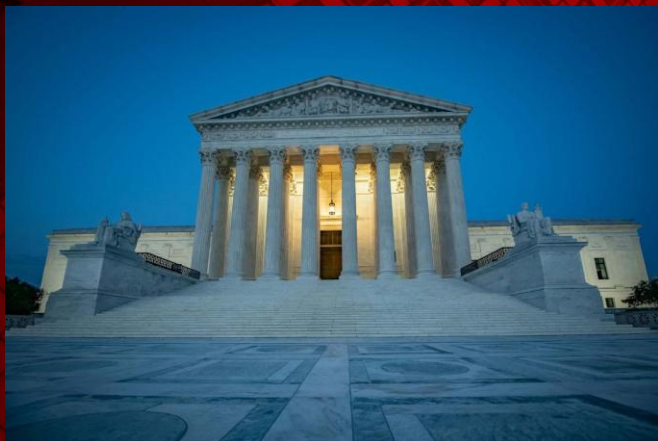
- On formula clauses (paraphrasing the agent):
 - “We will not accept formula clauses that go against public policy...including the King clause...why would we be having this discussion?...I haven’t read King in awhile...I will look at it...”
- On tax affecting:
 - Despite Cecil, Jones and Kress, the IRS agent is claiming that tax affecting is not appropriate and proposed a valuation increase. Taxpayer has 3 weeks to respond.
- Discounts:
 - There will always be some reason cited to reduce the discount.

Recent Audit Results – MPI Clients

Defined Name	Type	Status	Appraised Value of Interests	Proposed Value Adj.	MPI Discount	IRS Discount	Final Discount	Notes
NY Real Estate Entities - Client RR	Estate	Closed	\$ 36,000,000	\$ 1,600,000	30-38%	NA	30-38%	Settled at Exams; MPI Discounts Accepted; Real Estate Values Increased by \$400k.
NYC Real Estate Case - Client AM	Estate	Closed	\$ 39,000,000	\$ 21,000,000	42%	25%	36%	Settled at Exams; MPI used both income and discounted NAV approaches; the IRS accepted the income approach.
PE Fund Interests - Client DB	Gift	Closed	\$ 9,700,000	NA	30%, 41%	NA	30%, 41%	No change letter issued; discounts questioned by accepted after additional materials provided.
Hedge Fund Interest - Client RS	Gift	Closed	\$ 13,500,000	\$ 2,700,000	20%	0%	16%	Settled at Exams. IRS questioned the need or any discount but did not provide anything in writing.
Missouri Media Case - Client N	Gift	Closed	\$ 9,000,000	\$ 1,600,000	37%	28%	NA	Settled at Exams; agent sought a non-technical solution to work around the tax affecting issue; \$260k of gift tax paid.
Boston Real Estate Case - Client H	Estate	Closed	\$ 38,000,000	\$ 10,000,000	40-45%	18-27%	32.5-36.5%	Settled at Exams; Estate willing to pay some tax to avoid litigation and other issues being raised; \$1.65mm of additional tax paid.
Kansas Investment Company - Client AT	Gift	Closed	\$ 6,700,000	\$ 2,010,000	32%	2%	25.5%	Settled at Appeals; Agent and Engineer had made 2703 arguments and compared this to a hedge fund; Appeals Officer agreed that the IRS approach was unwarranted.
Uniform Supply Business - Client C	Gift	Closed	\$ 7,800,000	\$ 1,700,000	34%	26%	34%	No change letter issued.
Blockage Discount Case - Client DM	Estate	NoD	\$ 146,000,000	\$ 19,000,000	15%	1.7%	12%	Petition filed with USTC; ultimately settled.
Ohio Estate - Client DAL	Estate	Exams	\$ 10,000,000	\$ 2,600,000	47%	37%	46%	35% DLOM upheld. Valuation adjustment revised from \$2.0mm to \$600k.

Notable Court Cases

Transfer Tax / Income Tax Cases



USTC & Federal District Court

- Jones, Kress, Jackson, Cecil: Tax Affecting
 - All addressed the issue of valuing pass-through entities and where the pass-through income tax is relevant to the valuation of the equity.
- Grieve: Hypothetical vs. Particular Buyers/Sellers
 - Court rejected a common IRS argument that a large non-controlling owner could buyout the 1% controlling owner at a significant premium, thus warranting very little discount on the large non-controlling interest. 35% discount upheld on a 99.8% non-controlling interest.
- Nelson: Tiered Discounts
 - Tiered discounts were accepted; 59% overall effective discount applied. Involved a family investment company that owned interests in numerous underling operating businesses.
- Warne: Failing to Achieve the Full Charitable Deduction
 - For estate tax purposes, controlling, majority interests in five LLCs were valued at an 8.8% discount to NAV. While 100% of the equity of two LLCs were left to charity, a charitable deduction equaling the value of 100% of the entity was disallowed. Since what passed were two slices of the equity to separate charities, discounts were applicable to each interest that was donated (a 27.4% discount was applied to the 25% interest donated; a 4% discount was applied to the 75% interest donated).

USTC & Federal District Court

- Connelly: Corporate-Owned Life Insurance
 - Proceeds of corporate-owned life insurance is includable in the estate tax value of the decedent's shares.
 - Buy-sell agreement provisions completely ignored after execution of agreement.
 - If practical, consider cross purchase agreements or a separate insurance-dedicated LLC.
- Sorensen: Wandry Clause
 - Firehouse Subs case; Wandry clause challenged; valuation challenged; Notice of Deficiency claimed a \$13.6mm tax deficiency; tax penalties of \$5.4mm assessed
 - SETTLED BEFORE TRIAL.
 - Are the defined value clauses respected?
 - Settlement indicates Wandry Clause is ignored, number of shares transferred on 12/31/14 is fixed at 9,385; however, this kept significant stock out of the Estate and was beneficial long-term given significant future appreciation.
 - IRS arguments suggest they approve of Petter, Christiansen, McCord, Hendrix-type clauses.
 - What is the appropriate FMV of the stock?
 - Settlement favored IRS positions; \$17mm valuation adjustments over two dates.

A low-angle, black and white photograph of several modern skyscrapers reaching towards a cloudy sky. The perspective creates a sense of height and scale, with the buildings' facades showing grid-like window patterns.

Discounts in the Courts

Lack of Control and Lack of Marketability Discounts Accepted or Determined by the Courts

Case	Year	Assets	Court	Total Effective Discount from NAV or Control	DLOM Only
				Value	
Lauder	1994	Common Stock	Tax	50.0%	40.0%
Disanto	1999	Operating Business - Fabric for Clothing	Tax	NA	35.0%
Smith	1999	S corporation - owned/operated a farm	Tax	75.9%	35.0%
Smith	1999	Bank Stock	Tax	38.8%	35.0%
Weinberg	2000	Real Estate - Apartment Complex	Tax	49.8%	20.0%
Adams	2001	Securities/Real Estate/Minerals	Fed. Dist.	54.0%	35.0%
Jones	2001	Real Estate (A VLP)	Tax	44.8%	NA
Church	2002	Securities/Real Estate	Fed. Dist.	63.0%	NA
Peracchio	2003	Cash/Marketable Securities	Tax	31.0%	25.0%
McCord	2003	Securities/Real Estate	Tax	32.0%	20.0%
Lappo	2003	Securities/Real Estate	Tax	35.4%	24.0%
Green	2003	Bank Stock	Tax	46.0%	35.0%
Thompson	2004	Publishing Company	Tax	40.5%	30.0%
Kelley	2005	Cash/Certificates of Deposit	Tax	32.0%	23.0%
Temple	2006	Ranch	Fed. Dist.	38.0%	33.0%
Temple	2006	Winery	Fed. Dist.	60.0%	33.0%
Astleford	2008	Real Estate	Tax	36.0%	30.0%
Murphy	2009	Securities/Real Estate	Fed. Dist.	41.0%	32.5%
Gallagher	2011	Publishing Company	Tax	47.0%	31.0%
Guistina	2011	Timberland	Tax	55.7%	25.0%
Richmond	2014	Large Capitalization Public Equities	Tax	46.5%	32.1%
Kress	2019	Large Operating Business	Fed. Dist.	NA	25.0%-27.0%
Jones	2019	Operating Business / Timberland Owner	Tax	NA	35.0%
Nelson	2020	Operating Business - Equipment Dealer	Tax	40.5%	30.0%
Nelson	2020	Private Company Stock / Minor Other Assets	Tax	31.6%	28.0%
Grieve	2020	Cash, Investments, Notes (two entities)	Tax	34.5% / 35.1%	25.0%
Warne	2021	Real Estate LLCs (Non-Controlling Interest Only)	Tax	27.4%	NA
Smaldino	2021	Real Estate LLCs	Tax	36.0%	NA
Cecil	2023	Hospitality/Historical Resort Property Valued as Going Concern	Tax	35.2%-41.6%	19.0%-27.0%
Median - Overall				40.5%	30.0%
Median - Real Estate / Securities				39.5%	32.5%
Median - Cash / Securities				39.9%	28.6%

IRS CCA 202152018

What is a CCA?

- Chief Counsel Advice or “CCA” is a document issued by any national office component of the Office of the Chief Counsel of the Internal Revenue Service to field or service center employees of the IRS or regional or district employees of the Office of Chief Counsel...
- The purpose of CCA is to convey (1) any legal interpretation of a revenue provision; (2) any IRS or Office of Chief Counsel position or policy concerning a revenue provision; or (3) any legal interpretation of State law, foreign law, or other Federal law relating to the assessment or collection of any liability under a revenue provision.
- CCA includes both taxpayer specific and nontaxpayer specific advice.
- The type of CCA referenced herein is typically issued as a result of field-level Service employees requesting guidance on a topic; per the 1998 IRS Restructuring & Reform Act (and resulting from prior Freedom of Information Act (“FOIA”) lawsuits), CCA’s must be made available publicly, albeit with redactions to exclude taxpayer information.

Issues & Conclusions

- Issues:
 1. Whether, under the circumstances described below, the hypothetical willing buyer and willing seller of shares in a company would consider a “pending” merger for purposes of valuing stock for gift tax purposes.
 2. Whether Donor retained a qualified annuity interest in Trust when Donor used an outdated appraisal that did not take into account all the facts and circumstances of a pending merger.
- IRS Conclusions
 1. Yes. Under the fair market value standard, the hypothetical willing buyer and willing seller of a company would consider a “pending” merger when valuing stock for gift tax purposes.
 2. No. The retained interest is not a qualified annuity interest under §2702 of the Internal Revenue Code because Donor used an outdated appraisal that did not take into account all the facts and circumstances of a pending merger.
 - The transferor is treated as having made a gift equal to the full finally determined value of the assets contributed to the GRAT; there is **no offset** for the value of the retained annuity payment rights.

Summary of Facts

- At “Time Zero” or “T”, business owner contacted Investment Banks (“IBs”) to find a third-party buyer.
 - Shortly thereafter, the business was marketed to potential buyers, including some that had expressed interest in merging with the company in the past.
 - Potential buyers were expected to purchase a minority interest, with a call option to purchase the remainder of the company in several years based on a formula.
- Six months after hiring the IBs (“T+6” or “Date 1”), IBs presented owner with five offers.
- Three days later (“Date 2”), owner funded a two-year GRAT with shares of the company. Annuity payments were to be based on the appraised fair market value of the shares as of Date 2.
 - Owner used an appraisal contemporaneous with Time Zero, which is when owner began marketing the company. This appraisal did not include any language or analysis pertaining to a potential sale/merger, and the appraisal was prepared for 409a purposes.

Summary of Facts

- At T+9 (“Date 3”) the company received final offers, with four companies increasing their offers and one company withdrawing from the process.
- At T+11 (“Date 4”), owner made a contribution of shares to a Charitable Remainder Trust (“CRT”). Owner procured a qualified appraisal that opined to a value consistent with the offering price ultimately accepted by the company at T+12 (“Date 5”).
 - The tender offer accepted on Date 5 was approximately 3 times greater than the appraised value at Time Zero.
- At T+12 and T+24, 409A appraisals were again obtained. The values both came in below the offer price (at approximately 2 times the Time Zero 409A appraised value).
 - These 409A appraisals included the following language: “there have been no other recent offers or closed transactions in the Company shares as of the valuation date.” This language was not included in the 409A valuation at Time Zero.
- At T+36, and approximately 6 months after the two-year GRAT term expired, the buyer exercised its option to purchase the balance of the company shares; the value was almost four times the value used for the GRAT formation.
- When asked why they used the 409a valuation from Time Zero for purposes of the initial GRAT funding several days after the Company had received bids, the taxpayer stated that the business operations had not materially changed.

What Went Wrong?

- Using a 409A appraisal for a transfer tax matter (GRAT)
- Giving no consideration to the value implied by the purchase offers at the date of the GRAT contribution
- Using a six-month old appraisal in a case where value was clearly changing due to the sale/merger process
- Doing something entirely different for charitable purposes, seemingly to take advantage of the higher value
- For charitable purposes, it appears aggressive to use the finally accepted offer price one month prior to the actual acceptance date.

Takeaways - General

- This is yet another case that planners should use to warn clients of the dangers in (1) waiting too long to conduct estate planning, (2) assuming the GRAT is a panacea, and/or (3) using appraisals that are poor quality, stale or prepared for a different purpose.
- This CCA can be used as another hook to get clients to move on estate planning now, before there is the threat of a liquidity event. Taxpayers are looking for trouble if they wait to do their estate planning until a sale of the company starts coming into focus.
- Further problems will then arise if the potential sale/merger isn't considered in the valuation. Taxpayers need to be forthright with their valuation professionals about the potential for liquidity events and the status of any negotiations or dialogue.
- Taxpayers should be aware that one of the most scrutinized areas is the intrafamily transfer in the months before a sale/merger.

409A Appraisals

- Can we use them or not in the transfer tax context?
 - Often the answer is simply NO, because they are prepared for a specific income tax purpose and the appraisers often prohibit its use for any other purpose.
- There could be a set of biases present when conducting a 409A appraisal vs. tax, as 409a is mainly driven by the fact that these appraisals are sought in the context of equity-based compensation, including granting stock or stock options.
- 409A valuations are conducted under the same “fair market value” standard applicable in the transfer tax world. However, 409A valuations are often influenced by “fair value” (financial reporting) standards due to parallel usage for financial statement purposes.
- Many 409A appraisals are obtained “on the cheap” and lack rigor, possibly because information is limited or unavailable, and/or the company procuring them has limited resources.
- Adequate Disclosure Requirements – A 409A valuation report likely would not satisfy ADR, and often the taxpayer might not have access to the actual report.
- **Valuation date may differ from the transfer date; what transpired in the intervening period?**
- You might ask the appraisal firm if they can leverage the work done for the 409A and prepare a separate appraisal for transfer tax purposes.

How IRS Views Potential Sale/Merger

- The CCA points to many USTC cases that state that an appraisal needs to consider all relevant facts that a hypothetical willing buyer and willing seller would consider in a transaction.
 - Case references: Bank One Corp, Simplot, Redstone, McCord, Newhouse, Kollsman, Trust Services of America, Inc., Gilford
- Kollsman: relevant facts that may not be known by the owner of the property should also be considered in the valuation if such facts could be known after a reasonable investigation.
- Trust Services of America, Inc.: a post-valuation date event could be considered if it was reasonably foreseen.
- Gilford: an unforeseeable future event could be used to the extent that such transaction could establish an amount that a hypothetical buyer may pay a hypothetical seller.
- **Takeaway – ignore potential sale/merger transactions at your own peril; using the hard and fast “known or knowable” as of the valuation date is not a panacea; “knowable” provides significant latitude.**

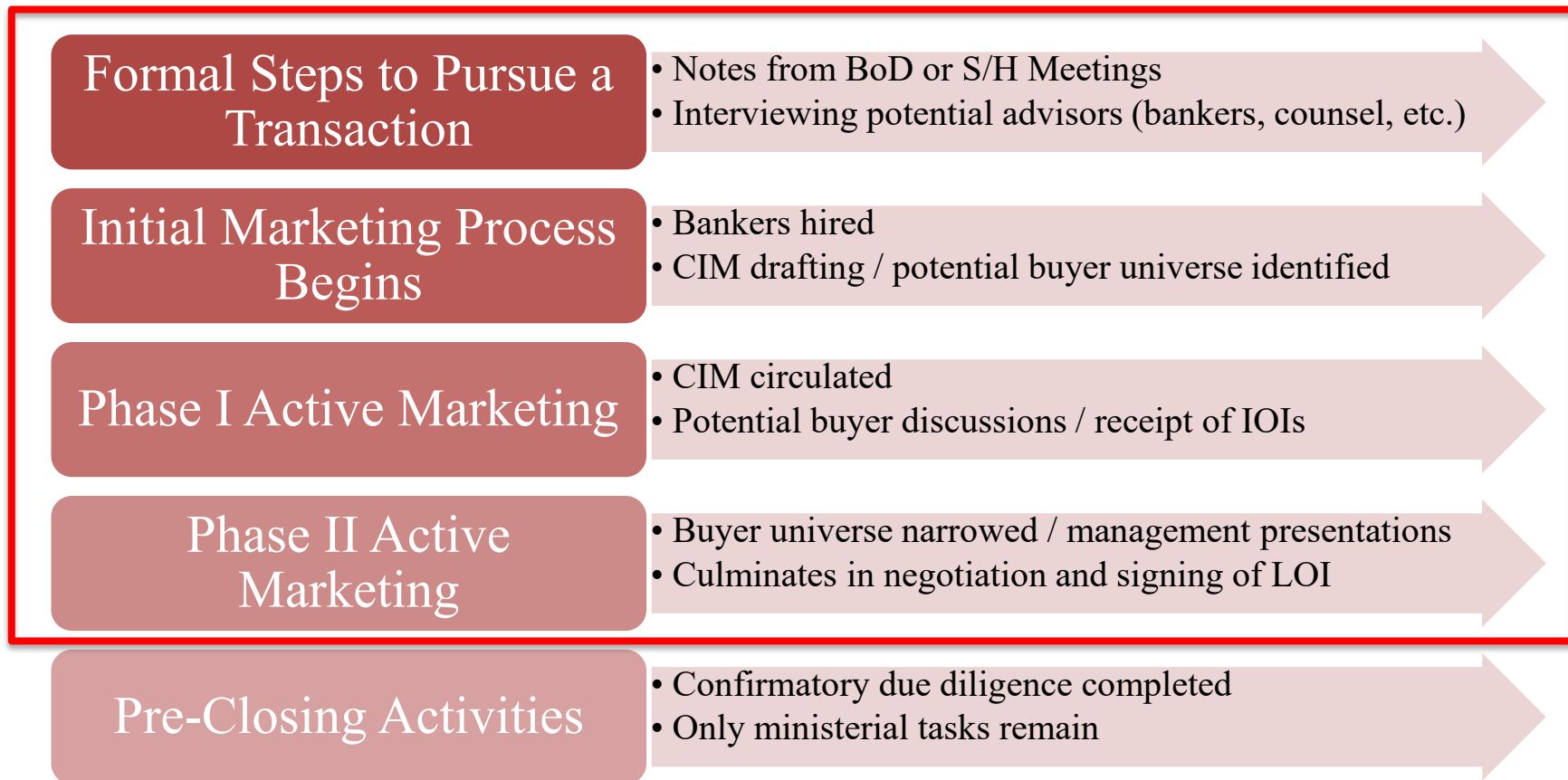
A low-angle, upward-looking photograph of several modern skyscrapers with glass facades, creating a sense of height and architectural grandeur. The buildings are slightly out of focus, emphasizing the text overlay.

MPI's Approach to Pre-Exit Estate & Charitable Planning Transactions

MPI's Approach - Potential Sale/Merger

- Thorough diligence with business owners and/or representatives of the company.
 - Press the owners/managers on any negotiations, discussions or even plans pertaining to current or future M&A activity.
- Request documentation (board packages, IB decks, financial projections, indications of interest received, letters of intent received, etc.) on or prior to valuation date that can explain where any activity stood on the exact valuation date. **Nail down the timeline.**
- Valuation approach dictated by timeline and facts as of the valuation date.

General Transaction Process



Potential Valuation Approach

Formal Steps to Pursue a Transaction

- Notes from BoD or S/H Meetings
- Interviewing potential advisors (bankers, counsel, etc.)

Initial Marketing Process Begins

- Bankers hired
- CIM drafting / potential buyer universe identified

- From a transaction evolution standpoint, not much has happened
 - No information on level of market interest
 - No information on type of transaction timeline
 - No information on type of transaction consideration
 - Industry dynamics may provide insight
- Probability-driven approach w/ stay private and potential sale scenarios
 - Unique factors aside, sale probability may be modest
 - While potentially useful, consider IB pitch valuations with skepticism

Level of Value		Probability	Equals
Non-Marketable, Non-Controlling	x	Higher	Prob- Weighted Value
Marketable, Controlling	x	Lower	

Potential Valuation Approach

Phase I Active Marketing

- CIM circulated
- Potential buyer discussions / receipt of IOIs

- Market perspectives gained
 - Number and type of bidders
 - Some information on deal structure
- Valuation considerations
 - How large and varied are bids?
 - What are the primary prospective buyer types (competitors vs. private equity)?
- Probability-driven approach w/ stay private and potential sale scenarios
 - Sale scenario reflective of bids
 - Still a two-scenario model (but must be able to reconcile the stay private scenario to the sale scenario)
 - Probability of sale increases
 - Incorporate any information on potential transaction consideration
 - Potentially measure all-in implied discount

Level of Value		Probability	Equals
Non-Marketable, Non-Controlling	x	Higher / Equal	Prob-Weighted Value
Marketable, Controlling [Bids]	x	Lower / Equal	

Calculate Implied Discount from Consideration

Potential Valuation Approach

Phase II Active Marketing

- Buyer universe narrowed / management presentations
- Culminates negotiation and signing of LOI

- Transaction consideration quite relevant
 - Advisable to value each component, if not 100% cash
 - Discounts from “headline” prices may be warranted
- Selected approach will be dictated by the facts at hand
 - Likely apply an “arbitrage” like discount to the value of transaction consideration
 - Drawn from analysis of announced, but not consummated public M&A transactions
 - Probability-driven approach w/ stay private and potential sale scenarios may be applicable if substantial closing risk determined to exist
- Potentially measure all-in implied probability of close

Market Value of Consideration

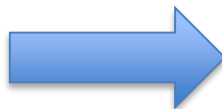
Less: Arbitrage Discount from Announced Deals

Equals: Fair Market Value

Calculate Implied Probability of Close

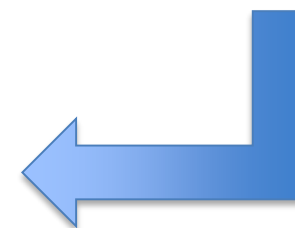
Illustrative Example

Stage: Path Selected / Market Outreach Begun			
Scenario	FMV Per Share	Probability	Weighted Result
Stay Private	\$ 75.00	67%	\$ 50.00
Successful Sale	127.00	33%	42.33
Reconciled Value			<u>\$ 92.33</u>
Implied Premium			23.1%
Implied Discount			-27.3%



Stage: Demonstrated Interest and Terms			
Scenario	FMV Per Share	Probability	Weighted Result
Stay Private	\$ 75.00	33%	\$ 24.75
Successful Sale	127.00	67%	85.09
Reconciled Value			<u>\$ 109.84</u>
Implied Premium			46.5%
Implied Discount			-13.5%

Stage: LOI Signed	
	FMV Per Share
Transaction Value Per Share	\$ 127.00
Less: Arbitrage Discount	-4.0%
Value Per Share	<u>121.92</u>
Implied Probability of Sale	90%



Speaker Bio and Disclaimers

Speaker Bio – Mark E. Lingerfield, ASA

Mark Lingerfield, ASA is a Partner and Managing Director at MPI and is based in the firm's Princeton office. He is responsible for client service and business development strategies in the Mid-Atlantic Region. Since joining MPI, Mark has determined the value of closely held securities of companies for a variety of purposes, including estate and gift taxes, income taxes, fairness opinions, stock purchase plans, buy-sell agreements, ownership succession, Employee Stock Ownership Plans, corporate and shareholder planning and S corporation conversions. Mark has extensive experience in many industries including professional sports franchises, beer and alcohol distributors, pharmaceutical manufacturers, newspaper companies, among many other industries. The valuation analyses and reports prepared by Mark have been used for presentations to management, directors and stockholders of client companies, as well as to attorneys, accountants and bank trust representatives. Mark is a member of the Board of Directors of Management Planning, Inc. and MPI Securities, Inc. He has also appeared as an expert witness in business valuation court proceedings.

Education:

- Rider University - M.B.A.
- The College of New Jersey - B.S.

Affiliations:

- American Society of Appraisers - Accredited Senior Appraiser (ASA) in Business Valuation
- Member – Various Estate Planning Councils in NJ, PA and DE

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