Contents

List of Exhibits xv
About the Author xix
About the Contributing Authors xxi
Foreword xxv
Preface xxvii
Acknowledgments xxix

1 Overview of Business Valuation Discounts and Premiums and the Bases to Which They Are Applied 1
Discounts and Premiums Are Big-Money Issues 2
“Entity Level” versus “Shareholder Level” Discounts and Premiums 3
How the Valuation Approaches Used Affect the Level of Value 8
Use of Public Company Data to Quantify Discounts and Premiums 9
How the Standard of Value Affects Discounts and Premiums 10
American Society of Appraisers Business Valuation Standard VII:
Valuation Discounts and Premiums 12
Summary 13

2 Minority Discounts and Control Premiums 15
Relevant Definitions 16
Basic Minority/Control Value Relationship 16
Prerogatives of Control 17
Factors Affecting Degree of Control 18
How the Valuation Methodology Affects the Minority Discount or Control Premium 25
Do Publicly Traded Minority Stock Prices Reflect Control Value? 29
Treatment of Control Premiums in the Delaware Courts 35
How the Purpose of the Valuation Affects Minority Discounts or Control Premiums 37
Summary 38

3 Empirical Data Regarding Minority Discounts and Control Premiums 41
Premiums Paid in Acquisitions 41
Identifying Industries with Higher or Lower Control Premiums 62
Caveats Regarding Use of Control Premium Data 63
Are Control Premiums Too High? 65

vii
Contents ix

8 Blockage Discounts 118

Blockage Is Distinct from Restricted Stock 119
Factors to Analyze in Quantifying Blockage Discounts 119
Must Consider Ways of Selling Stock 122
“Price Pressure” and “Market Exposure” 122
Block Buyer Could Ameliorate Blockage Discount 122
Blockage Discounts Recognized in Estate and Gift Tax Regulations 123
Blockage Discounts in U.S. Tax Court 123
Financial Accounting Standards That May Affect
Blockage Discounts 126
Blockage Discounts Used to Estimate Illiquidity Discounts 126
Summary 126

9 John Emory Pre–Initial Public Offering Discount for Lack of Marketability Studies—Complete Underlying Data 128

Study #3: Adjusted Study, August 1987–January 1989 130
Study #5: Adjusted Study, August 1990–January 1992 130
Study #8: Adjusted Study, November 1995–April 1997 131
Study #9: Adjusted Study, Dot-Com Companies,
May 1997–March 2000 131
Summary 133

10 Valuation Advisors Discount for Lack of Marketability Study 182

Description of Study 182
Results of Study 184
Summary 185

11 Factors Affecting Discounts for Lack of Marketability for Minority Interests 186

Size of Distributions 187
Prospects for Liquidity 191
Pool of Potential Buyers 193
Risk Factors 194
Summary 198

12 Discounts for Lack of Marketability for Controlling Interests 200

Discounts for Lack of Marketability for Controlling Interests: A Controversial Concept 202
“Control, Marketable” Is an Oxymoron 202
<table>
<thead>
<tr>
<th>Contents</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bases from Which Controlling Interest Discounts for Lack of Marketability May Be Deducted</strong> 202</td>
</tr>
<tr>
<td><strong>Factors Affecting Controlling Interest Discounts for Lack of Marketability</strong> 204</td>
</tr>
<tr>
<td><strong>Public versus Private Company Acquisition Multiples</strong> 207</td>
</tr>
<tr>
<td><strong>Court Treatment of Controlling Interest Discounts for Lack of Marketability</strong> 210</td>
</tr>
<tr>
<td><strong>Summary</strong> 211</td>
</tr>
<tr>
<td><strong>13 The Quantitative Marketability Discount Model: A Shareholder Level DCF Model</strong> 213</td>
</tr>
<tr>
<td><strong>Introduction</strong> 213</td>
</tr>
<tr>
<td><strong>The Structure of the Shareholder Level DCF Model</strong> 214</td>
</tr>
<tr>
<td><strong>A Visual Representation of the Shareholder Level DCF Model</strong> 217</td>
</tr>
<tr>
<td><strong>Factors Contributing to Marketability Discounts</strong> 218</td>
</tr>
<tr>
<td><strong>Summary</strong> 223</td>
</tr>
<tr>
<td><strong>14 Marketability Discounts in the Courts—Minority Interests</strong> 225</td>
</tr>
<tr>
<td><strong>Gift and Estate Tax Cases</strong> 227</td>
</tr>
<tr>
<td><strong>Employee Stock Ownership Plan Case</strong> 231</td>
</tr>
<tr>
<td><strong>Dissenting Shareholder Cases</strong> 232</td>
</tr>
<tr>
<td><strong>Minority Oppression Cases</strong> 234</td>
</tr>
<tr>
<td><strong>Marital Dissolution Cases</strong> 234</td>
</tr>
<tr>
<td><strong>Summary</strong> 238</td>
</tr>
<tr>
<td><strong>15 Marketability Discounts in the Courts—Controlling Interests</strong> 241</td>
</tr>
<tr>
<td><strong>Gift and Estate Tax Cases</strong> 241</td>
</tr>
<tr>
<td><strong>Marital Dissolution Cases</strong> 243</td>
</tr>
<tr>
<td><strong>Summary</strong> 244</td>
</tr>
<tr>
<td><strong>16 Voting versus Nonvoting Stock</strong> 245</td>
</tr>
<tr>
<td><strong>Voting versus Nonvoting Stock Scenarios</strong> 245</td>
</tr>
<tr>
<td><strong>Empirical Studies Show Little Differential for Small Minority Interests</strong> 246</td>
</tr>
<tr>
<td><strong>Transactions Involving Premiums for Control Blocks</strong> 251</td>
</tr>
<tr>
<td><strong>Court Cases Involving Voting versus Nonvoting Stock</strong> 251</td>
</tr>
<tr>
<td><strong>Summary</strong> 258</td>
</tr>
<tr>
<td><strong>17 Key Person Discounts and Premiums</strong> 260</td>
</tr>
<tr>
<td><strong>Empirical Evidence Supports Key Person Discount</strong> 261</td>
</tr>
<tr>
<td><strong>Internal Revenue Service Recognizes Key Person Discount</strong> 263</td>
</tr>
<tr>
<td><strong>Factors to Consider in Analyzing the Key Person Discount</strong> 264</td>
</tr>
<tr>
<td><strong>Quantifying the Magnitude of the Key Person Discount</strong> 265</td>
</tr>
<tr>
<td><strong>U.S. Tax Court Cases Involving Key Person Discounts</strong> 266</td>
</tr>
<tr>
<td><strong>Key Person Discounts in Marital Dissolutions</strong> 270</td>
</tr>
<tr>
<td><strong>Key Person Discounts in Other Types of Cases</strong> 272</td>
</tr>
<tr>
<td><strong>Summary</strong> 274</td>
</tr>
</tbody>
</table>
## Contents

### 18 Discounts for Trapped-In Capital Gains Taxes  
276

- Rationale for Trapped-In Capital Gains Tax Discount 277
- “General Utilities Doctrine” 277
- Tax Court Recognizes Trapped-In Capital Gains 278
- Internal Revenue Service Acquiesces to Trapped-In Capital Gains Discount 279
- Subsequent Tax Cases Regularly Recognize Trapped-In Capital Gains Tax Discount 280
- Trapped-In Capital Gains in Dissenting Stockholder Actions 282
- Trapped-In Capital Gains in Bankruptcy Court 283
- Trapped-In Capital Gains Taxes in Marital Dissolutions 283
- Treatment of Capital Gains Tax Liability 286
- Treatment of Capital Gains Tax Liability in S Corporations 288
- Summary 288

### 19 Nonhomogeneous Assets (“Portfolio”) Discounts  
291

- Portfolio Discount Principle 291
- Empirical Evidence Supporting Portfolio Discounts 292
- How to Value Companies with Disparate Portfolios 294
- Quantifying the Portfolio Discount 295
- Portfolio Discounts in the Courts 295
- Summary 298

### 20 Discounts for Environmental, Litigation, and Other Contingent Liabilities  
300

- Concept of the Contingent Liability Discount 300
- Financial Accounting Standard #5 May Provide Guidance in Quantifying Contingent Liabilities 301
- Treatment of Contingencies in the U.S. Tax Court 301
- Treatment of Contingencies in Marital Dissolution 304
- Summary 304

### 21 Discount Adjustments for Limited Partnership Interests and Other Asset Management Entities  
305

- Introduction 307
- Partnership Features 307
- Other State Law and Regulatory Issues 308
- Compliance with Federal Income Tax Regulations 308
- Compliance with Federal Transfer Tax Regulations 309
- Analysis of Ownership and Classes of Interests 309
- Analysis of Underlying Adjusted Net Asset Value 310
- Analysis of Income Capacity Value 310
- Valuation of Noncontrolling Entity Interests 311
- Discounts for Lack of Control and Marketability 313
- Court Cases Regarding Limited Partnership Values 315
- Summary 321
22 Adjusting Values for Differences in Size 323
   Income Approach 323
   Market Approach 325
   Criticisms of the Size Premium 329
   Court Cases Involving the Size Premium 329
   Summary 334
   Sources of Additional Data 334

23 Discounts and Premiums in ESOP Valuations 337
   ESOP Definition, Types, and Benefits 337
   “Adequate Consideration” for ESOP Valuation Purposes 338
   Control Premiums in ESOP Valuations 339
   Discounts for Lack of Marketability in ESOP Valuations 339
   ESOP Court Cases 340
   Summary 344

24 Discounts and Premiums in Divorce Disputes 345
   Control Premiums in Divorce 345
   Discounts for Lack of Marketability in Divorce 345
   Discounts for Lack of Voting Rights in Divorce 346
   Key Person Discounts in Divorce 346
   The Effective Discount for Personal Goodwill in Divorce 346
   Active versus Passive Appreciation 347
   Summary 347

25 Discounts and Premiums in Corporate and Partnership
   Dissolution and Oppression Cases 349
   Dissolution for Shareholder (Partner) Oppression 349
   Discounts 351
   California Oppression Cases 357
   Delaware’s Approach 359
   Summary 360

26 Discounts and Premiums in Fair Value for Financial Reporting 362
   Introduction 362
   Fair Value of Reporting Units 363
   Fair Value of Share-Based Compensation 369
   Summary 371
   Additional Reading 371

27 Premium and Discount Issues in Undivided Interest Valuations 372
   Description and Characteristics of Undivided Interests 373
   Appraisal of Assets in Fee-Simple Interest 376
   Factors Affecting the Value of an Undivided Interest 379
Contents

Valuation Adjustments for Undivided Interests 381
Court Decisions Related to Undivided Interest Discounts 389
Summary 395

28 Common Errors in Applying Discounts and Premiums 397
Using Synergistic Acquisition Premiums to Quantify
Premiums for Control 398
Assuming That the Discounted Cash Flow Valuation Method
Always Produces a Minority Value 398
Assuming That the Guideline Public Company Method
Always Produces a Minority Value 398
Valuing Underlying Assets Rather Than Stock
or Partnership Interests 399
Using Minority Interest Marketability Discount Data to Quantify
Marketability Discounts for Controlling Interests 399
Using Only Restricted Stock Studies (and Not Pre–Initial
Public Offering Studies) as Benchmark for Discounts
for Lack of Marketability 399
Inadequate Analysis of Relevant Factors 400
Indiscriminate Use of Average Discounts or Premiums 400
Applying (or Omitting) a Premium or Discount
Inappropriately for the Legal Context 400
Applying Discounts or Premiums to the Entire Capital
Structure Rather than Only to Equity 401
Quantifying Discounts or Premiums Based on Past Court Cases 401
Using an Asset Appraiser to Quantify Discounts or
Premiums for Stock or Partnership Interests 401
Summary 401

Appendix A Bibliography 403
Books 403
Articles 404
Periodicals 407

Appendix B Data Resources 410
Control Premiums/Minority Discounts 410
Discounts for Lack of Marketability 410
Discounts from Net Asset Value for Limited Partnership Interests 412
Discounts from Net Asset Value for REITs and REOCs 413
Discounts from Net Asset Value for Closed-End Investment Funds 413
Discount and Capitalization Rates 414

Appendix C How Much Can Marketability Affect Security Values? 416
I. The Framework 417
II. The Upper Bound 418
III. A Comparison 420
IV. Conclusion 422
References 422
Appendix D  Internal Revenue Service Revenue Ruling 77-287  424
  Section 1. Purpose  424
  Sec. 2. Nature of the Problem  424
  Sec. 3. Background and Definitions  424
  Sec. 4. Securities Industry Practice in Valuing Restricted Securities  425
  Sec. 5. Facts and Circumstances Material to Valuation
      of Restricted Securities  427
  Sec. 6. Weighing Facts and Circumstances Material
      to Restricted Stock Valuation  428
  Sec. 7. Effect on Other Documents  429

Appendix E  Securities and Exchange Commission Rules 144 and 144A  430
  History  442

Appendix F  Table of Cases  448

Index  455