Dissolution Actions Yield Less than Fair Market Enterprise Value (Appraising for "Fair Value" Under California Corporations Code Section 2000)

By Arthur J. Shartsis, Esq.[1]

> ***While virtually all states have dissenters' rights appraisal statutes, only a few states have "dissolution statutes," addressing a minority stockholder's right to receive "fair value" in instances of minority oppression. California has had such a statute, with some amendments, for over twenty years. Minority oppression litigation is growing, and many other states' courts may look to California for precedent in similar cases of first impression. Here California attorney Art Shartsis summarizes his views on appraisal of a company under California Corporations Code Section 2000. – Shannon Pratt***

"The fair value shall be determined on the basis of the liquidation value as of the valuation date but taking into account the possibility, if any, of sale of the entire business as a going concern in a liquidation." Section 2000(a)

Introduction

California Corporations Code Section 2000 provides majority shareholders with a manner for determining "fair value" in order to buy the shares of a complaining minority shareholder who seeks dissolution of a corporation. Aside from the single sentence in Section 2000(a) quoted above, "[l]ittle help, if any, is provided by the statutory procedure which governs the appraisal process in a dissolution proceeding of a closely held corporation."[2]

The few cases interpreting Section 2000 also fail to provide complete guidance regarding how to determine "fair value" as required by the statute. None of the court decisions address directly the issue that Section 2000 is part of the statutory scheme applicable to corporate dissolution, intended to give the complaining shareholder the full benefit of a corporate dissolution, but nothing more. Rather, the cases provide a patchwork of insights, only some of which are consistent with the basic purpose of Section 2000.

This situation has led to both confusion and inconsistent valuation methodology among those responsible for appraising "fair value" under Section 2000. As Harold Marsh[3] has observed:

> A number of CPAs appointed as appraisers under Section 2000 of the GCL have simply refused to follow the statutory language and instead have determined a "fair market value" for the shares being appraised, although one court stated that this was impermissible under the language of Section 2000. [Citing *Ronald v. 4-C's Electronic Packaging, Inc.*, 168 Cal. App. 3d 290, 214 Cal. Rptr.

> 225 (1985).] The courts have had a difficult time applying the valuation standard specified in Section 2000 . . . [4]

This article will address the "fair value" appraisal of a business that is subject to a dissolution proceeding by a minority shareholder.

The Purpose of Section 2000

The central valuation provision of Section 2000(a) mandates as follows: "The fair value shall be determined on the basis of the liquidation value as of the valuation date but taking into account the possibility, if any, of sale of the entire business as a going concern in a liquidation." "Fair value" is distinctly different from the traditional appraiser's determination of "fair market value." The reasons for this difference are found in the code provision itself.

In order to understand why "fair market value" or the traditional "going concern" value of a company is not the same as "fair value" as used in Section 2000, it is important to focus on what a Section 2000 proceeding is and how it comes about. Section 2000 is part of Chapter 20 of the General Corporation Law which provides "General Provisions Relating to Dissolution." A Section 2000 proceeding arises as a result of a proceeding for involuntary dissolution brought by a minority shareholder or shareholders (Cal. Corp. Code Sec. 1800) or a proceeding for voluntary dissolution initiated by shareholders representing only 50 percent of the voting power of the corporation (Cal. Corp. Code Sec. 1900).[5] This article will refer to the party or parties moving for dissolution as the "minority shareholder" or "dissenting shareholder". If the Section 1800 action is successful or if the Section 1900 action is completed, the corporation is dissolved. Upon dissolution, the corporation is liquidated in accordance with California law and the shareholders receive whatever proceeds are left after the entire liquidation process has been paid for and completed.

Section 2000 was created for majority shareholders to "avoid the dissolution of the corporation and appointment of any receiver" by having a court-supervised appraisal determine how much the minority shareholder would have received if the dissolution proceeding had been taken to its final conclusion of liquidating the corporation and distributing the proceeds. It is not the majority shareholder who takes the initiative to force out or buy out the minority shareholder. Rather, it is the minority shareholder who seeks to dissolve the corporation in accordance with California law. Section 2000 merely provides a way to give the minority shareholder the benefit that was sought by the dissolution action while at the same time giving the majority the option to preserve the existence of the corporation. Thus, as reported by Marsh, it was the intention of the drafting committees who authored Section 2000 "that the moving parties [the minority shareholder] should not be entitled to more than the liquidation value of the shares, i.e., what they would receive if their objective [liquidation of the Company] is obtained."[6] Citing Marsh, the court in *Brown v. Allied Corrugated Box Co.*.[7] observed that the object of the appraisal proceeding is "to award plaintiffs what they would have received had their involuntary dissolution action been allowed to proceed to a successful conclusion."

An important concept of Section 2000 is the fact that even though Section 2000 has been

invoked by the majority shareholder to avoid the liquidation of a company in a dissolution proceeding, liquidation may still occur for all parties involved. This is how the Section 2000 process works. (1) The minority shareholder sues for dissolution.[8] (2) If the parties cannot agree upon a value of the minority share, the majority shareholder moves to stay the dissolution proceeding to obtain a valuation to determine how much the minority shareholder would have received if liquidation of the Company were actually completed.[9] (3) The majority shareholder is required to post a bond to apply to the "estimated" reasonable expenses and attorneys' fees of the proceeding for the minority shareholder if the majority shareholder ultimately does not purchase the shares of the minority shareholder.[10] (4) The court appoints three appraisers[11] to determine the "fair value" (as defined in Section 2000(a)) of the shares owned by the minority shareholder.[12] (5) The court adopts an appraised value of what the minority shareholder would have received at the end of the liquidation process.[13] (6) The "court shall enter a decree which shall provide in the alternative for winding up and dissolution of the corporation unless payment is made for the shares within the times specified by the decree."[14] (7) If the majority shareholder elects to pay the appraised amount, that amount is paid in cash prior to the deadline set up by the court.[15] (8) If the majority shareholder elects not to pay the minority shareholder the appraised amount, the company is actually liquidated and all shareholders receive a proportional share of whatever the resulting cash proceeds are.[16] (9) If the shares are not purchased, the minority shareholder can move the court to determine recoverable attorneys' fees and costs to be assessed against the majority shareholder. These charges are not limited to the bond amount.[17]

Since the minority shareholder has sought dissolution, the minority shareholder is entitled to receive that amount that would have been available for the minority shareholder following the completion of the dissolution proceeding. In this way the minority shareholder receives the full benefit of the dissolution proceeding that the minority shareholder has commenced.

"Fair Value" vs. "Fair Market Value"

A concept of "fair value" and not "fair market value" must be used in a Section 2000 proceeding. It is obvious that the legislature intended "fair value" to be something other than "fair market value," or it would have used the phrase more common to conventional appraisal practices.[18] Perhaps the easiest way to understand the difference between the "fair value" definition of Section 2000 and "fair market value" is to look at Revenue Ruling 59-60, which is the traditional basis of going concern valuations. Revenue Ruling 59-60 defines "fair market value"

> as the price at which the property would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, both parties having reasonable knowledge of relevant facts.

A number of critical elements found in Revenue Ruling 59-60 are not present in a Section 2000 proceeding. First, a willing seller is not involved. In a corporate dissolution, the seller is involuntarily disposing of the assets or the company. Second, the seller is under a "compulsion" to sell, specifically because of the pendency of the dissolution proceeding; this is entirely opposite from the provisions of Revenue Ruling 59-60 that contemplate that the seller "is not under any compulsion to sell." Third, the involuntary seller under a compulsion to sell pursuant

to Section 2000 does not have the luxury of waiting for a top offer; the sale must be completed under the adverse conditions of a corporate dissolution conducted in accordance with California law. Fourth, implicitly, the buyer is aware of the seller's weakened position specifically because the sale of assets or sale of the business is occurring in a dissolution proceeding.[19]

Dissolution Valuation

There are two ways to dispose of a company in a dissolution. One is by simply liquidating the assets in a piecemeal fashion. The other is the possibility that after the dissolution proceeding has been commenced the seller will be able to find a party that will buy the entire business before the business has to be liquidated in the dissolution proceeding.[20] These two methods of sale provide the dual valuation concept of Section 2000(a) that "the fair value shall be determined on the basis of the liquidation value as of the valuation date, the taking into account the possibility, if any, of the sale of the entire business as a going concern in a liquidation."[21]

The dual valuation concept of Section 2000(a) means that it is necessary to consider two values in order to arrive at the "fair value" to be paid to the minority shareholder pursuant to Section 2000. The first value to be determined under Section 2000 is the straight "liquidation value" of the assets as of the valuation date. The law mandates that this "liquidation value" is the "basis" of a Section 2000 proceeding.[22] Such a piecemeal liquidation would be conducted in accordance with California law and therefore any valuation must properly adjust for the depressive effect of a forced liquidation sale of a company's assets in a dissolution proceeding. The second value to be considered relates to the "possibility" that the "entire business as a going concern" could be sold "in a liquidation." This means that the appraisal should evaluate the possibility of whether a buyer for the whole business could be found after the dissolution proceeding commenced, but before the separate assets are liquidated.

If the appraisers determine that there is no realistic possibility that the "entire business as a going concern" could be sold in liquidation, then such an alternative value would not have to be developed and the appraisers should determine only the piecemeal liquidation value of the assets.[23] On the other hand, if the appraisers determine that there is a realistic possibility that "the entire business as a going concern" could be sold in a liquidation proceeding, then the appraisers must determine what such a forced sale might yield. The statute, however, does not suggest that the mere possibility of a sale of a going concern in a liquidation leads to the conclusion that a going concern value should be the final value in the Section 2000 proceeding. Rather, there has to be a realistic prospect that the sale for cash of the entire business can be made in a time frame consistent with a dissolution proceeding, as required by Section 2000. Thus, it would be unreasonable to consider the possibility of a sale of the entire business if such purchaser could not be found and the sale could not be closed on a timely basis. Finally, the statute is clear that this "possibility" of "sale of the entire business as a going concern in a liquidation" should be taken "into account." The statute does not mandate that this value be used.

While appraisers routinely assume in "fair market value" valuations that there is always a willing buyer for a business, that may not, in fact, be the case. Many types of businesses are routinely bought and sold; in such case the appraisers could properly assume a very high probability of

sale. However, some unique or specialized businesses may not be easy to sell, or may not have many or any likely buyers. This reality must be reflected in a Section 2000 valuation.

In sum, the piecemeal liquidation value forms the benchmark for determining "fair value." Taking into account the realistic possibility, if any, that a sale of the entire business as a going concern could occur may increase the "fair value" above such piecemeal liquidation value, but the possibility of such sale has to be discounted by the probability that such sale will not occur. The conditions and costs of conducting such a sale in a liquidation must also be considered, as discussed below.

The formula for determination of "fair value" under Section 2000 therefore is as follows:

Fair Value	=	Piecemeal Liquidation Value	+	Incremental value based on the percentage of possibility, if any, of the sale for cash of the entire business as a going concern in a liquidation

Section 2000 Dissolution Conditions

Section 2000, properly applied, takes into account certain conditions that affect the amount that can be realized by the shareholders in a corporate dissolution. These conditions are necessary to yield to the minority shareholder exactly what would have been received if the company actually had been liquidated or the entire business had been sold as a going concern in a liquidation proceeding. In effect, the appraisers must treat the company as if it is going through an actual dissolution proceeding.[24]

A. Conditions for Both Piecemeal Liquidation of Assets or Forced Sale

The following conditions that arise in a corporate dissolution apply both to the piecemeal liquidation of assets and the forced sale of the entire business as a going concern.

1. Public Announcement that the Company is in a Dissolution Proceeding

The minority shareholder instituting the suit should be in the same position as if the dissolution sought by that shareholder had actually occurred. California law provides:

> (c) When an involuntary proceeding for winding up has commenced, the corporation shall cease to carry on business except to the extent necessary for the beneficial winding up thereof and except during such period as the board may deem necessary to preserve the corporation's goodwill or going-concern value pending a sale of its business or assets, or both, in whole or in part. The directors shall cause written notice of the commencement of the proceeding for involuntary winding up to be given by mail to all shareholders and to all known creditors and claimants whose addresses appear on the records of the corporation, . . . [25]

It is therefore clear that for the purposes of determining fair value under Section 2000, the appraisal must consider the negative impact of such public notice on both the piecemeal liquidation value and the possible sale of the company as a going concern in a dissolution proceeding. A number of adverse conditions must be anticipated upon such public notice. For example:

a. Key personnel may leave once it becomes obvious that the company is in liquidation.
b. Commercial relationships may not be renewed or continued.
c. Payment of loan obligations may be accelerated.
d. Sales are likely to be lost to competitors.
e. Accounts receivable collection becomes more difficult.
f. Suppliers lower credit limits, require advance payment, impose C.O.D. terms, or otherwise reduce their credit exposure.
g. Unions, customers, suppliers or anyone else who had been willing to yield a current benefit in anticipation of a future outcome, become less flexible and more interested in extracting the most value in the present time frame.
h. Financial statements might reflect lower net worth and earnings because the company would no longer be assumed to be a "going concern". As a result, banks and other credit grantors would lower or eliminate available credits.

Generally speaking, the business is at a competitive and cash flow disadvantage once its pending liquidation is made known, as required by law.

2. Cost of Piecemeal Liquidation or Forced Sale of the Company

Section 2000 allows the minority shareholder to receive in cash what would be received if the action to dissolve the corporation succeeded. Therefore, it is necessary to take into account costs that would be incurred in liquidating the assets and achieving the required cash liquidity. Such costs include auction fees, sales commissions, sales taxes, taxes at the corporate level resulting from the sale of assets, legal fees, accounting fees and other expenses that would result from the liquidation. As dealt with below, there are certain different costs applicable to the piecemeal sale of assets and the forced sale of the entire business.

3. Time Value of Money

A piecemeal liquidation can take from several months to several years to complete, rather than being completed all at once. Assuming that all the assets can be sold, some of the proceeds can be withheld for years in a liquidating trust to reserve for claims that may arise from acts that either took place while the Company was in existence or arose as part of the liquidation. Given the time value of money, the net proceeds which are to be distributed to the shareholders at the end of this period are worth less than the same amount of cash in hand today.

The same considerations apply to a forced sale of the entire business as a going concern in a

dissolution proceeding. Even though the sale itself is conducted on an urgent basis, some time will pass before the transaction is completed and the cash is received, undetermined claims are resolved and can be paid, and the surplus is distributed to the shareholders.

The amounts which would be derived over time in a liquidation or a sale of the entire business must therefore be discounted to present value, since the minority shareholder in a Section 2000 proceeding will receive cash at the time of the stock repurchase if the company is not actually dissolved.

B. Conditions for Piecemeal Liquidation of Assets -- Costs of Liquidation

Because costs would be incurred in a piecemeal liquidation of assets, those costs must be deducted to determine what the shareholders would actually receive after the liquidation is completed. Costs incurred in liquidating individual assets may include, but are not limited to:

1. Continued cost of operation until liquidation is completed.
2. Legal fees incident to negotiations and required liquidation notices and filings.
3. Brokerage fees paid on sale of real estate and other significant assets.
4. Fees paid auctioneers and others who assist in liquidating assets.
5. Corporate income taxes that may arise from the disposition of assets.
6. Accounting and other professional fees incident to the winding up of business.
7. Legal fees incurred in resolving any outstanding contingent liabilities or other disputes.
8. Costs of administering the liquidating trust which is often employed to marshal the sums to be distributed to stockholders.
9. Reserve for contingencies.
10. Employee termination costs.
11. Payment of debts.
12. Resolution of long term obligations, such as leases.

C. Conditions for Forced Sale of the Entire Business in the Course of a Dissolution Proceeding

1. Sale of the "Entire Business"

After determining the "liquidation value" as the basis for the valuation, Section 2000(a) explicitly requires the appraisers to take into account the possibility "of the sale of the entire business as a going concern in a liquidation." The appraisers must therefore determine the likelihood that a single purchaser would purchase the "entire business" for cash as constituted as of the appraisal date. Presumably in an actual liquidation some combination of a sale of assets and a sale of an operating portion of the business might occur; however, such a combination is specifically not contemplated by Section 2000.

2. Hypothetical Assumptions

The actual sale of a business ordinarily requires certain agreements and representations on the part of a motivated seller. Accordingly, *Mart v. Severson*, supra, requires that the "appraisers should always assume a hypothetical seller's covenant not to compete just as they should assume that the parties to the hypothetical sale will negotiate the other requisite terms to a sales agreement."[26] Presumably this extends to seller's warranties, agreements to assist in transition to new management, and the like. *Mart* indicates that the standard for such hypothetical assumptions is "the reasonable person's conduct."[27] One federal court, interpreting Section 2000, held that "the hypothetical sale method of valuation asks what hypothetical willing sellers would do to maximize their return." In that case the court concluded that the appraiser could find that the sellers would extend trade secret licenses controlled by the majority owners to a new buyer, even if the majority owners claimed that they would not do so upon sale.[28]

3. Time Restraints on the Forced Sale.

A going concern that is up for sale in the ordinary course of business has the opportunity to await the optimum time for sale, without the time pressures and other adversities created by an involuntary dissolution. As discussed above, this is one of the crucial differences between Revenue Ruling 59-60 and Section 2000. If the dissolution sought by minority shareholder proceeded through liquidation, any possible transaction involving sale of the entire business would proceed under pressure to be concluded promptly. A receiver may be appointed. Because the intent of Section 2000 is to keep the moving party in the same position as if the forced sale had actually occurred, it is reasonable to assume that the forced sale would take place immediately since the operation would be under the dissolution constraints described above. Such an immediate sale under liquidation conditions would limit the company's ability to optimize its sale price.

4. Cash Proceeds Required

As pointed out by Marsh, Section 2000, ". . . contemplates the purchase for cash only . . ."[29] This concept eliminates from consideration the sale of the Company in exchange for stock, debt or other non-cash consideration. This cash requirement sharply limits the population of potential purchasers for any business. Public companies often use stock when acquiring a business in order to conserve cash, preserve availability of net operating losses for tax purposes, or to achieve "pooling of interest" treatment for financial reporting purposes. Installment purchase cannot be considered. Also eliminated are leveraged buy-outs and other transactions requiring the seller to accept debt as consideration. Further, the appraisal cannot consider any agreements which have significant contingencies in the purchase price determination. Such transactions typically provide for the seller to receive additional compensation if certain post acquisition date targets are achieved. Long-term payouts based on non-competition agreements would obviously be precluded. Eliminating all these possible acquirers from consideration has a dampening effect on the valuation. The appraisal is restricted to considering only those buyers who are willing and able to pay a fixed price in cash at the time of purchase.

5. Lack of Marketability Discount

Whether by forced sale or otherwise, it is well established that an ownership interest in a closely held corporation must be discounted from its initially calculated value to reflect its lack of marketability. This is separate from a minority share discount, which is not appropriate in a Section 2000 proceeding because all minority and majority interests would be paid off proportionately in a completed dissolution.[30] If shares of the same corporation were publicly traded, a shareholder could sell his shares on the open market and realize cash. However, it is usually much more difficult to find a willing buyer for an entire closely held business than to trade stock in an available market.

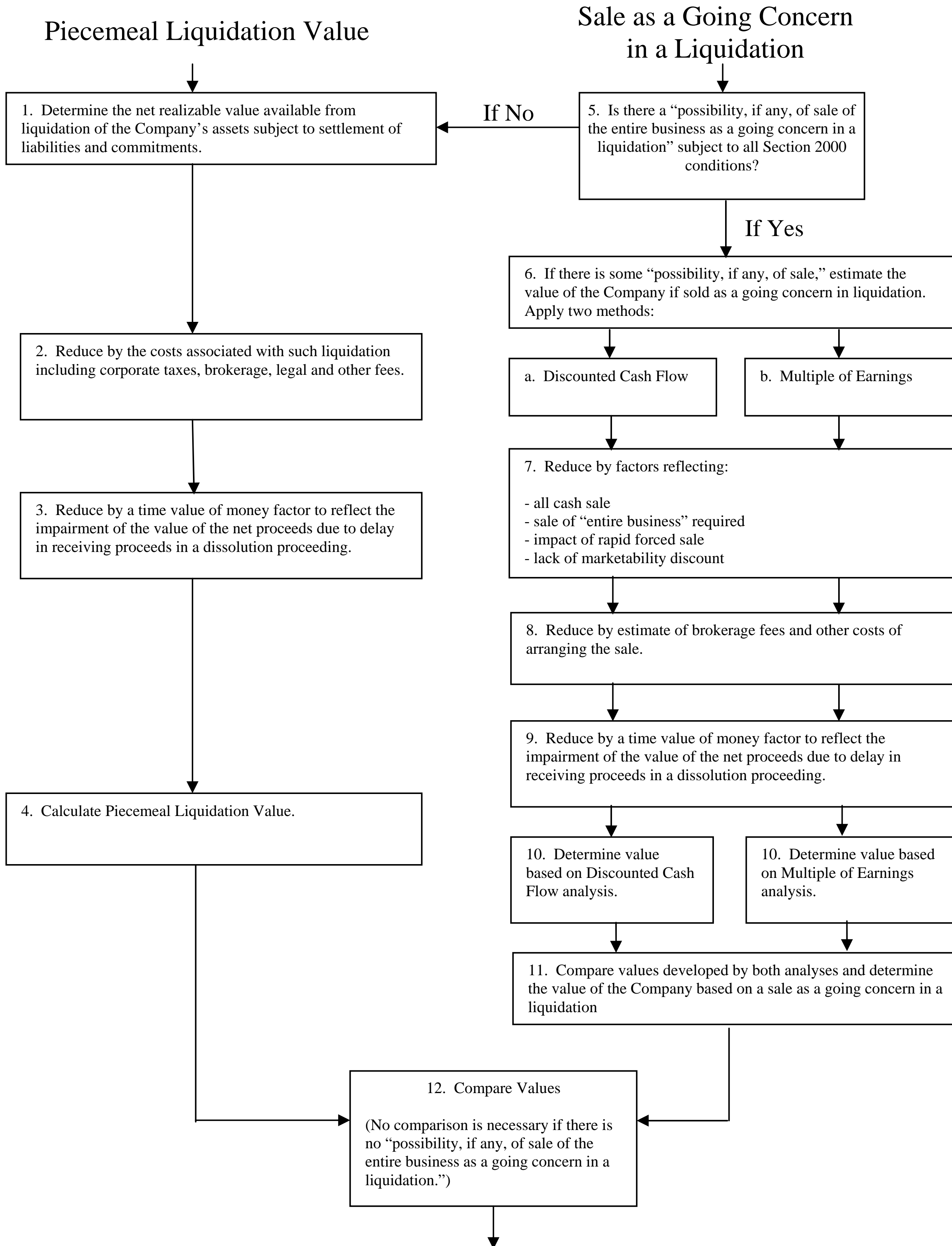
6. Cost of Sale of Entire Business as a Going Concern in a Dissolution Proceeding

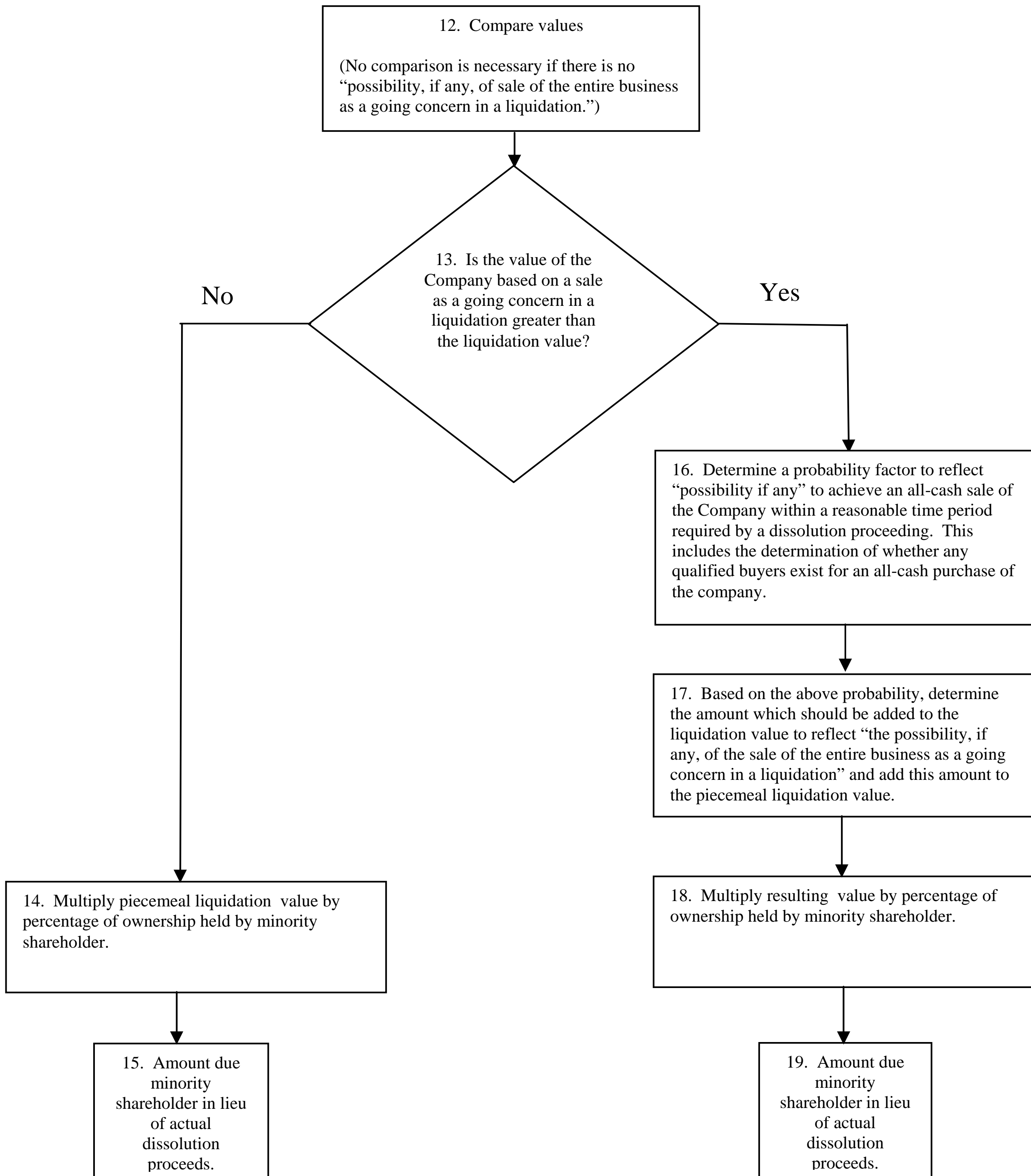
Sale of the entire business as a going concern in a dissolution proceeding may require the employment of an investment banker or other merger/acquisition specialist in order to maximize the yield. Such transactions can require the preparation of an Offering Memorandum or other such documents, with their attendant legal, accounting and printing costs. Attorneys and accountants must also be engaged to protect the sellers' interests. Such costs must be included in the valuation to determine what a shareholder of the selling company would ultimately receive.

Section 2000 Decision Flow Chart

The following flow chart summarizes the steps necessary to give the minority shareholder the full benefit of the dissolution that has been sought. For illustration purposes, this chart makes the assumption that with regard to the sale of the business in a liquidation the appraisal might apply two of the conventional valuation methods, discounted cash flow and multiple of earnings. It may be that the appraisers determine that other valuation methods should be used; if so, steps 6a and b and step 10 would be different depending upon the method chosen.

Section 2000 Decision Flowchart




Piecemeal Liquidation Value
Sale as a Going Concern in a Liquidation
12. Compare values
(No comparison is necessary if there is no "possibility, if any, of sale of the entire business as a going concern in a liquidation.")
13. Is the value of the Company based on a sale as a going concern in a liquidation greater than the liquidation value?
No
Yes
16. Determine a probability factor to reflect "possibility if any" to achieve an all-cash sale of the Company within a reasonable time period required by a dissolution proceeding. This includes the determination of whether any qualified buyers exist for an all-cash purchase of the company.
17. Based on the above probability, determine the amount which should be added to the liquidation value to reflect "the possibility, if any, of the sale of the entire business as a going concern in a liquidation" and add this amount to the piecemeal liquidation value.
14. Multiply piecemeal liquidation value by percentage of ownership held by minority shareholder.
18. Multiply resulting value by percentage of ownership held by minority shareholder.
15. Amount due minority shareholder in lieu of actual dissolution proceeds.
19. Amount due minority shareholder in lieu of actual dissolution proceeds.

Conclusion

A Section 2000 proceeding will yield to the moving minority shareholder less than fair market value of the shares. This must logically follow from the fact that the value to be determined is that of shares of a company liquidated or sold as a going concern in dissolution proceeding, not shares of a company sold as a going concern without any compulsion to sell under any financial arrangement acceptable to the seller. When the court in *Brown v. Allied Corrugated Box Co.* correctly held that a minority share discount did not apply in a Section 2000 proceeding, the court did not intend that the complaining minority shareholder receive an amount that would be higher than traditional fair market value by removing the discount.

It must be kept in mind that the basis of Section 2000 is dissolution. Section 2000 is not a theoretical division of the business. It is not an exercise of dissenting shareholders rights pursuant to Cal. Corp. Section 1300, et seq., and not a forced buy-out of a minority shareholder. While appraisal of stock in such other circumstances might yield something closer to fair market value, Section 2000 should not. Section 2000 appraisers must adhere to the fundamental statutory concept that they are trying to ascertain in good faith what the resulting proceeds would be for a minority shareholder if the company actually went through a complete dissolution proceeding pursuant to California law.

AVV[^CLU^165385105

---

[1] The author is a partner at Shartsis Friese LLP, a San Francisco law firm, at SFLAW.com. This article was originally printed in the *Business Valuation Update*™ and was updated by the author in 2011. Reprinted with permission.
[2] *Ronald v. 4-C's Electronic Packaging, Inc.*, 168 Cal. App. 3d 290, 297 (1985).
[3] Harold Marsh, one of the leading commentators on California Corporations law, served as the draftsman of the new General Corporation Law for the Assembly Select Committee on Revision of the Corporations Code and the State Bar Committee on Corporations, which drafted the basic revisions to the current version of Section 2000 that provides the "fair value" provision.
[4] HAROLD MARSH & R. ROY FINKLE, MARSH'S CALIFORNIA CORPORATION LAW, § 2A.14 at 118.56 (3d ed. 1990).
[5] Section 2000(a).
[6] HAROLD MARSH & R. ROY FINKLE, MARSH'S CALIFORNIA CORPORATION LAW, § 21.20 at 1782 (3d ed. 1990).
[7] *Brown v. Allied Corrugated Box Co.*, 91 Cal. App. 3d 477, 489 (1971).
[8] Section 2000(a).
[9] Section 2000(b). Once the majority invokes Section 2000 to stay the involuntary dissolution pursuant to Cal. Corp. Code Sec. 1800, a minority shareholder no longer must establish grounds for dissolution. "The procedure permitted by *section 2000*, which is entirely optional, embodies a summary proceeding which supplants the action for involuntary dissolution pursuant to *section 1800*." *Go v. Pacific Health Services, Inc.*, 179 Cal. App. 4th 522, 530 (2009). Grounds for voluntary dissolution are not required pursuant to Cal. Corp. Code Sec. 1900.
[10] Section 2000(b).
[11] The parties can agree upon, and seek, court confirmation of an appointment process, or can allow the court to select the appraisers.
[12] Section 2000(c).
[13] Section 2000(c).
[14] Section 2000(c). The trial court's decree is "not automatically stayed pending appeal." *Veyna v. Orange County Nursery, Inc.*, 170 Cal. App. 4th 146, 155 (2009). The purchasing party must apply first to the superior court "regarding the manner and time within which the purchasing party must post the money, security, or combination thereof, to guaranty the purchase of the shares." *Id.* at 157, 158.
[15] Section 2000(d).

[16] Section 2000(c). *In re Orange County Nursery, Inc.*, Nos. CV 09-08158, CV 10-01605, CV 10-05808, 2010 U.S. Dist. LEXIS 112021, at *19-25 (C.D. Cal. Oct. 12, 2010) the moving party sought to avoid the consequences of either having to purchase the minority share or dissolve the corporation by filing a petition for corporate reorganization under Chapter 11 of the Bankruptcy Code. The federal district court rejected this attempted end-run around §2000 by holding that the "minority instead had a court-ordered right to payment for its shares - either directly from [the corporation] or through dissolution proceedings." *Id.* at *14. Because payment had not been made for the minority shares within 60 days after the filing of the Chapter 11 petition, the minority shareholder "has a claim for value of its shares" had the corporation been dissolved. While the minority could no longer force dissolution in the Chapter 11 proceeding, the minority was entitled to be paid for the shares based on a value that the Bankruptcy Court would determine. The practical effect of the decision was to convert the minority shareholder's equity interest into a claim that is required to be paid in full before the majority shareholders will be allowed to retain their equity interests under a plan of reorganization. It seems unlikely that the Bankruptcy Court would elect a value other than the Section 2000 appraised value, since it is already a court approved value. *Id.* at *18. If the majority sought bankruptcy protection because the Section 2000 appraisal was too high, that strategy resulted in the minority being virtually guaranteed to receive the Section 2000 appraised value.
[17] Section 2000(b). *In re Orange County Nursery, Inc.*, 2010 U.S. Dist. LEXIS at *20-23.
[18] *Ronald v. 4-C's Electronic Packaging, Inc.*, 168 Cal. App. 3d 290, 294 (1985) rejected the methodology of the majority appraisers where "they expressly assumed that 'fair value' is equivalent to fair market value." *Ronald* cited with favor the Marsh view "that the moving parties [plaintiffs] should not be entitled to more than the liquidation value of the shares, i.e., what they would receive if their objective is obtained." *Id.* at 297, citing MARSH CAL. CORPORATION LAW (2d ed. 1981) §20.22, p. 638.
[19] Shannon Pratt's Valuing a Business, 3rd Edition, discusses at page 24 the "fair market valuation" definition of the American Society of Appraisers, which "comports to that found in the U.S. Tax Code and in Revenue Ruling 59-60." On the same page he also discusses the Appraisal Foundation definition of "market value." These three definitions are basically the same, with some minor differences. None of these three "fair market value" definitions apply to a Section 2000 proceeding because they assume the seller either to be under no compulsion to sell, or to be "typically motivated," neither of which conditions is present in a Section 2000 proceeding. The Appraisal Foundation also explicitly acknowledges that "a reasonable time is allowed for exposure in the open market," also a condition not present in a forced sale under Section 2000. At page 27 Pratt discusses "fair value" as it generally applies to dissenting shareholders' appraisal rights. Pratt readily acknowledges that "various state courts certainly have not equated [fair value] to fair market value." At page 28 Pratt goes on to acknowledge that fair value under a dissolution statute like Section 2000 is, in turn, different than "fair value" under a dissenting shareholder statute.
[20] *Mart v. Severson*, 95 Cal. App. 4th 521, 533 (2002).
[21] The appraisers must consider everything that could have a material effect on valuation. For example, appraisers must determine and consider the value of "derivative or direct claims on behalf of or against" the company. *Cotton v. Expo Power Systems, Inc.*, 170 Cal. App. 4th 1371, 1379 (2009).
[22] Section 2000(a).
[23] In *Brown*, 91 Cal. App. 3d at 490, the majority of appraisers in fact determined that the situation of the particular business "made a going concern liquidation unlikely." The minority "reached the opposite conclusion." The court reserved to itself the resolution of this factual dispute, noting that neither approach was "invalid per se." *Id.* at 489. Similarly, in *Trahan v. Trahan*, 99 Cal. App. 4th 62, 78 (2002), the appraisers determined that the corporation could not be sold as a going concern in a liquidation.
[24] Consistent with taking into account the full cost of dissolution in the appraisal, the majority appraisers in *Brown*, supra, adjusted their appraisal by establishing a liquidation value and then "subtracting therefrom the cost of liquidating the corporation's assets and winding up its business . . . ." *Brown*, 91 Cal. App. 3d at 483. It is unclear from the opinion what specific costs were included.
[25] California Corporations Code Section 1805(c).
[26] *Mart*, 95 Cal. App. 4th at 534.
[27] *Id*.
[28] *Hubbard v. Phil's BBQ of Point Loma, Inc.*, No. 09CV0735, 2010 U.S. Dist. LEXIS 80213, at *12-13 (S.D. Cal. Aug. 2, 2010). *Hubbard* followed *Mart v. Severson*, footnote 20, *supra*.
[29] HAROLD MARSH & R. ROY FINKLE, MARSH'S CALIFORNIA CORPORATION LAW, § 21.20, at 1782 (3d ed. 1990).
[30] In *Brown*, 91 Cal. App. 3d at 486, the court correctly reasoned that a minority share discount should not apply since a dissolution would result in a distribution of "the exact same amount per share." *Brown* implicitly confirms

that “fair market value” is the wrong standard since a minority share discount is an element in the “fair market value” of a minority ownership. *Brown*’s holding underscores the concept that the valuation is of the entire business subject to sale in a dissolution proceeding.