

Appraisal Rights to Realize Intrinsic Value of TIBCO and Other Buyouts

After an unusual lull in private equity buyouts of publicly traded companies,¹ the proposed \$4 billion sale of TIBCO Software is the first transaction of 2014 with characteristics that justify institutional investor consideration of appraisal rights to realize the long term “intrinsic” value of a company. Other companies – ANN Inc. (\$2 billion) and PetSmart (\$7 billion) are examples – have also been recently reported in explorations with potential non-strategic buyers, suggesting that we now resume our attention to making appraisal rights a practical investment alternative for regulated funds.

A review of the TIBCO situation is presented [below](#), both for consideration of that specific buyout and as an indication of how the Forum will be screening other situations for support of institutional investor interests.²

It should be noted that there has also been interest in Forum support of appraisal rights in smaller buyouts. These naturally involve smaller amounts of institutional investment, but tend to have much more significant differences between the market-priced offer and a court’s appraisal of intrinsic value. We have not yet developed standardized processes for identifying and screening these smaller buyouts, but will welcome suggestions of situations for review.

Viewing practical access to appraisal rights as essential to an investor’s responsible realization of long term enterprise value, I will appreciate any suggestions to guide the Forum’s support of the process.

GL – November 18, 2014

Gary Lutin
Chairman, The Shareholder Forum
575 Madison Avenue, New York, New York 10022
Tel: 212-605-0335
Email: gl@shareholderforum.com

¹ See [September 9, 2014 New York Times DealBook: "Take-Private Deals Are Nearly Extinct on Wall Street"](#).

² For an introductory summary of professional investor use of appraisal rights and applicable valuation standards, see [“Appraised Value Rights | A Summary for Investors”](#).

Proposed buyout review (update):**TIBCO Software Inc. (TIBX)**

Record date for voting rights: October 27, 2014
Shareholder vote: December 3, 2014
Proposed buyer: Vista Equity Partners
Market value: \$3.9 billion
Incorporation: Delaware

In the first over-\$1 billion buyout that appears to justify support of appraisal rights since the start of 2014, TIBCO Software Inc. announced on September 29, 2014 ([here](#)) that it had entered into an agreement to be acquired by Vista Equity Partners for \$24 per share. Following is a preliminary review of the three screening criteria for our consideration of appraisal rights investment alternatives:¹

1. The proposed transaction should be considered a “standalone” buyout. Although Vista is reputed for active and effective management support of its portfolio companies, opportunities to improve management quality can be implemented by a business enterprise with or without a change in its ownership and should therefore not be considered a value created by a combination. It is therefore unlikely that the bid price of Vista, which was in any event nearly matched by a \$23.75 per share bid from a rival financial sponsor,² would be considered to include value that should be adjusted for synergies of a business combination. Under the circumstances, it can be assumed that the professional investment manager with access to inside information will not be able to make convincing arguments that it knowingly offered to pay more than the intrinsic value of TIBCO.
2. The size of the buyout is in a range that should justify support for “Level 1” pricing if owners of 5% of the company’s stock want AVR (Appraised Value Rights) liquidity, and should in any event allow for “Level 2” pricing even for AVR participants that decline public registration.
3. The company is incorporated in Delaware, the state that provides a well-defined and relatively predictable process for appraisal rights.

It should be noted that there may be delays or modifications of the proposed transaction resulting from class action claims based on alleged miscalculations of the purchase price.³ We will of course be monitoring this.

GL – November 17, 2014

Gary Lutin
Chairman, The Shareholder Forum
575 Madison Avenue, New York, New York 10022
Telephone: 212-605-0335
Email: gl@shareholderforum.com

¹ See “[Specific case analyses](#)” in the [December 23, 2013 Forum Report: Getting Organized](#).

² See page 36 (PDF p.46) of the [October 29, 2014, TIBCO Software Inc., SEC Forum DEFM14A: Proxy Statement for special meeting of stockholders on December 3, 2014](#).

³ See [November 5, 2014 Bloomberg: "Tibco Directors Faulted Over \\$100 Million Vista Deal Loss"](#).