AIRA | Association of Insolvency & Restructuring Advisors

STANDARDS FOR DISTRESSED BUSINESS VALUATION

AIRA Association of Insolvency & Restructuring Advisors

Standards for Distressed Business Valuation

Effective March 1, 2014

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Association of Insolvency & Restructuring Advisors

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Acknowledgements

AIRA's Board of Directors developed and approved the Standards for Distressed Business Valuation effective March 1, 2014 for all members. The Standards apply when performing engagements to estimate value that culminate in the expression of an opinion and/or conclusion of value in matters involving business turnaround, restructuring, bankruptcy, and insolvency.

The Association is grateful to David Bart, McGladrey LLP, for taking the lead role in drafting the Standards, and to Tom Morrow, AlixPartners LLP, and David Payne, D. R. Payne & Associates, Inc, for assisting in the drafting, reviewing and editing of the Standards.

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INTRODUCTION TO THE STANDARDS FOR DISTRESSED BUSINESS VALUATION

THE ASSOCIATION OF INSOLVENCY AND RESTRUCTURING ADVISORS

The Association of Insolvency and Restructuring Advisors (AIRA) is a nonprofit professional association serving financial advisors, accountants, crisis managers, business turnaround consultants, lenders, investment bankers, attorneys, trustees and other individuals involved in the fields of business turnaround, restructuring, bankruptcy and insolvency.

History

AIRA was founded in 1984 as the Association of Insolvency Accountants (AIA). The current title, Association of Insolvency and Restructuring Advisors, was adopted in 1999 to reflect the broadening of its identity as an association of professionals involved with distressed businesses.

In 1992, AIRA developed and initiated the Certified Insolvency and Restructuring Advisor (CIRA) program, "to recognize those professionals that demonstrate a high level of competency through not only the completion of a course of study and examination but by providing evidence of comprehensive experience."

In 2004, AIRA launched its second certification program, the Certification in Distressed Business Valuation (CDBV). Before the inception of the CDBV program, there was no professional designation to recognize those who were skilled and experienced in distressed business valuation work or expert valuation testimony in bankruptcy litigation. The CDBV was designed to provide specialized training and certification, uniquely and specifically formulated for the performance of services encompassing valuation of underperforming assets, including distressed and/or bankrupt companies.

Mission and Objectives

The mission of AIRA is to:

- Unite and support professionals providing business turnaround, restructuring and bankruptcy services; and,
- Develop, promote and maintain professional standards of practice, including a professional certification program.

These objectives are set forth by the Board of Directors in AIRA's Bylaws:

- To aid members in developing competency in their practice areas;
- To provide training for members entering into and continuing in their practice areas;
- To develop and maintain standards of professional competency;
- To develop and promulgate ethical standards of practice;
- To develop and promulgate financial reporting standards;
- To define and develop roles and responsibilities of financial advisors under the Bankruptcy Code; and,
- To encourage cooperation among professionals with similar interests.

Education

Objective — To provide top-quality professional education programs for members and other professionals and to accurately record and make notification of credit earned for continuing professional and legal education.

Offerings include:

- *Annual Bankruptcy and Restructuring Conference* — four-day intensive event dealing with current issues in turnaround, legal, tax, accounting, and financial areas, designed to include many networking events and social activities.

- *Advanced Plan of Reorganization Conference (POR)* — regional one-day conferences on current developments, held in New York City annually.

- *Regional Conferences* — one-day conferences on current development topics and trends held in Chicago, Los Angeles and other locations.

- *VALCON*—annual in-depth conference on valuation fundamentals and technical valuation issues co-sponsored by AIRA, The University of Texas Law School, and the American Bankruptcy Institute (ABI).

- *Webinars*—live, online expert presentations with question and answer sessions.

- *Self Study Courses*—on a variety of topics providing opportunities to earn CPE and CLE credits.

Certification

Objective — To develop and carefully administer stringent certification programs that include written examinations and an educational system covering a common body of knowledge and extensive relevant experience.

Programs—The two certification programs developed and administrated by AIRA are:

- *Certified Insolvency and Restructuring Advisor (CIRA)* — developed to recognize professionals that demonstrate a high level of competency through completion of a course of study, examination and comprehensive relevant experience.

- *Certificate in Distressed Business Valuation (CDBV)* — a specialized certification program designed to train and accredit professionals whose work includes valuation of underperforming assets, including distressed and/or bankrupt companies.

Information

Objective — To provide accurate and timely information to apprise members of professional developments, important events and resources; also, to carefully maintain and protect data pertaining to member records, professional education and certification requirements, and transactions with AIRA. Resources include:

- *AIRA Journal* — bi-monthly professional publication of articles and technical updates, plus information on Association events and news;

- *Membership Directory* — current AIRA members available on AIRA's website;
- *CIRA and CDBV Directory* — annual publication of current CIRAs and CDBVs and available on AIRA's website;
- *AIRA Weekly Advisor* — weekly email updates on upcoming events and valuable resources;
- *Website* — complete online access to AIRA information, upcoming events, registration, file updates, course and conference descriptions, and much more, at www.aira.org; and,
- *Technical Support* — a committee of recognized specialists to answer members' questions on bankruptcy, insolvency and restructuring issues.

The "Association of Insolvency and Restructuring Advisors" is registered with the National Association of State Boards of Accountancy (NASBA) as a sponsor of continuing professional education on the National Registry of CPE Sponsors. State boards of accountancy have final authority on the acceptance of individual courses for CPE credit. Complaints regarding registered sponsors may be submitted to the National Registry of CPE Sponsors through its website: www.learningmarket.org.

THE GOALS AND INTENT OF THE STANDARDS FOR <u>DISTRESSED BUSINESS VALUATION</u>

In recent years, the need for business valuations and/or valuation analyses has increased significantly. Performing a business valuation involves specialized knowledge and skill. Valuations and valuation analyses may encompass interests or entities that are deemed distressed. Distress can embody financial, operational, legal, regulatory and other factors which can impact a business' or interests' ability to satisfy obligations to equity holders, creditors or other parties in interest. Valuation analyses or the determination of values may need to be performed to better understand the situation, its potential outcomes, or to evaluate alternatives that may be available to resolve the nature of the distress in order to provide a basis for recoveries by the various parties in interest. Valuation conclusions may be utilized in reporting the results of restructurings in bankruptcy and in accordance with generally accepted accounting principles.

Traditional valuation methods may require significant adjustment to reflect the unique financial or operating situation of a firm in distress, the legal context of the valuation and the intended purpose of the valuation. For example, valuations performed in non-distressed situations implicitly assume that the business is a going-concern whose cash flows will continue into the future unless the valuation is specifically being performed under liquidation assumptions for specified purposes. These assumptions may not be relevant to a firm in distress, and their adoption in the application of standard valuation methodologies may result in overstatements of value. Volatility in cash flows or their potential truncation, risk adjusted discount rates, the feasibility of securing financing, and other matters may need to be incorporated into the distressed valuation analysis. Situations involving excessive leverage, the short and long term financial impact of significant changes to business strategy, liquidity constraints, uncertain probabilities of achieving an operational or financial turnaround, and other issues affecting the situation may need to be factored into the valuation. The duration of periods with shrinking revenues or declining margins as well as the impact of asset divestitures and payouts to various constituencies may affect profitability, cash flows and leverage assumptions. Minimum floor values for collateral, the impact of lending constraints and perceptions of risk may lead to higher lending rates, further impacting cash flows. Valuation comparisons using market data, which is typically driven primarily by healthy companies, may be less relevant or may require unique analysis and adjustment for the distressed business.

The AIRA is a nonprofit professional association serving financial advisors, accountants, crisis managers, business turnaround consultants, lenders, investment bankers, attorneys, trustees and other individuals involved in the fields of business turnaround, restructuring, bankruptcy and insolvency. The AIRA believes that providing guidance and standards of practice regarding the application of general valuation theory and minimum reporting criteria to the specialized circumstances faced in distressed situations is in the best interests of the valuation profession. Given the increasing number of professionals who are performing business valuation engagements or some aspect thereof, the AIRA Board of Directors has approved AIRA's written *Standards for Distressed Business Valuation* to improve the consistency and quality of practice among its members.

AIRA members are required to follow the AIRA's *Standards for Distressed Business Valuation* when performing engagements to estimate value that culminate in the expression of an opinion and/or conclusion of value in matters involving business turnaround, restructuring, bankruptcy and insolvency.

DISTRESSED BUSINESS VALUATION

Valuation and/or valuation analysis of businesses, business ownership interests, securities, or intangible assets may be performed for a wide variety of purposes, including:[1]

1. *Transactions* (or potential transactions) including, but not limited to, acquisitions, mergers, divestitures, leveraged buyouts, initial public offerings, employee stock ownership plans and other share based plans, partner and shareholder buy-ins or buyouts, stock redemptions and other capital transactions.

2. *Litigation* (or pending litigation) relating to matters such as marital dissolution, insolvency or bankruptcy, contractual disputes, owner disputes, dissenting shareholder and minority ownership oppression cases, fraud investigation, and employment and intellectual property disputes.

3. *Compliance-oriented engagements* including, but not limited to, (a) financial reporting and (b) tax matters such as corporate reorganizations; S corporation conversions; income, estate, and gift tax compliance; purchase price allocations; and charitable contributions.

4. *Planning oriented engagements* for operational alternatives, income tax, estate tax, gift tax, mergers and acquisitions, and personal financial planning.

USES OF VALUATION IN WORKOUTS, RESTRUCTURINGS AND BANKRUPTCY[2]

The definition of value and its proper application has long been debated. "Value is a word of many meanings…It gathers its meaning in a particular situation from the purpose for which a valuation is being made"[3] The fundamental concept that value is based on growth, risk and future cash flows holds true when the company or business interest being valued is in distress. However, there are additional considerations to be taken into account when performing a valuation involving workouts, restructurings and bankruptcy.

Traditional valuation tools and methodologies may or may not be applicable in the distressed environment. In many cases, traditional tools and methodologies are still appropriate, but careful consideration may need to be given to factors that are not traditionally considered, such as the impact of changing leverage on risk adjusted returns or the reconstitution of tax attributes and their impact on future cash flows. In other cases, traditional tools and methodologies are still appropriate but need to be adjusted so as not to overstate or understate value. Moreover, in some cases, greater reliance on certain methods, such as the Discounted Cash Flow Method under the Income Approach, may be more appropriate due to less reliable comparisons to the non-distressed marketplace, such as the Guideline Public Company Method and the Merger and Acquisition Method within the Market Approach.

Valuation is not a science, nor merely a mathematical formula. Both quantitative and qualitative factors, inputs and adjustments may be used in the valuation process. Furthermore, value may change based on the Premise of Value and the Standard of

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[1] Based on the AICPA's Statement of Standards for Valuation Services (SSVS No. 1), June 2007.

[2] Based on the AIRA's training materials for the CIRA and the CDBV.

[3] Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railway Co. 318 U.S. 523, 540, 63 S Ct. 727, 87 L. Ed. 959 (1943).

Value on which the valuation is based. For situations in distress, the Standard of Value and the Premise of Value may shift with the situation and the purpose of the valuation. Any valuation reflects an assessment of value at a particular point in time, and the value of an asset or business may change as different facts and circumstances arise. In addition, it may be appropriate to attribute a range of values to an asset or business rather than a point estimate for strategic decision making and negotiation in the restructuring process.

For the CIRA and CDBV, valuations performed in the context of workouts, restructurings and bankruptcy are used in a multitude of situations that will be subject to valuation standards including:

- Developing an opinion of value regarding the reorganization value of the business enterprise or the related equity value available for old or new equity holders.
- Developing an opinion of value regarding a sale of assets or a segment of the business.
- Developing an opinion of value on the insolvency/solvency of the business enterprise at points in time.
- Developing an opinion of value for assets and/or the business on a going concern, orderly or forced liquidation basis for purposes of assessing confirmation of a plan, conversion to Chapter 7 or for adequate protection.
- Developing an opinion of value for financial reporting purposes including fresh start accounting and impairment of the carrying value of assets.
- Developing an opinion of the amount of tax attributes available for future use (such as net operating losses).

Consulting services rendered in bankruptcy engagements as well as in other troubled debt situations often rely on valuation services that may be subject to valuation standards depending on the service provided including:

- Identifying an appropriate capital structure upon emergence, negotiating with creditors, assisting with developing a plan of reorganization and advising the client on potential plan actions utilizing third party indications of value.
- Advising Chapter 11 creditors about voting to accept or reject a plan of reorganization based upon various financial metrics including valuation metrics provided by third parties. The reorganization plan outlines payouts to the different classes of creditors based on the value of the reorganized debtor. A creditor may vote to accept or reject a proposed plan. The financial advisor may advise the creditor to accept or reject a plan based upon the proposed payout under the plan as compared with the potential payout under an alternative scenario such as liquidation. Determining values regarding the debtor and/or the debtor's assets as part of a plan of reorganization is considered a valuation analysis which offers an opinion of value, and is therefore subject to valuation standards.
- Advising and assisting clients with forecasts and analysis of cash collateral, replacement collateral and collateral values provided by third parties.
- Preparing and/or evaluating cash flow projections, sensitivity analysis and present value analysis for purposes of assessing viability and feasibility of the debtor.

- Performing the "Best Interests of Creditors Test" regarding the treatment of creditors under a proposed plan of reorganization under the U.S. Bankruptcy Code by evaluating going concern versus liquidation values of the debtor.
- Assessing the potential for insolvency at various dates in order to evaluate possible recovery actions. Recovery actions require a determination of the debtor's solvency or insolvency position as of the transfer date. Determining values regarding the debtor and/or the debtor's assets for insolvency litigation purposes is considered a valuation analysis, and is therefore subject to valuation standards which offer guidance on relevant valuation approaches, methods and factors to be considered when determining the Fair Value of assets and liabilities as they are defined by case law and precedent.
- Assessing the size of an equity cushion to evaluate adequate protection. The equity cushion is the value of property that exceeds the amount owed to the creditor holding a secured claim. The equity cushion may shield the creditor's interest from loss arising from decreases in property value during the time the automatic stay remains in effect. Determining the equity cushion is considered a valuation analysis which offers an opinion of value, and is therefore subject to valuation standards.
- Assessing the value of collateral. Secured claims in bankruptcy are granted for the value of related collateral pledged by the debtor. Claims in excess of collateral value are deemed to be unsecured. Frequently, assets pledged as collateral consist of tangible assets, such as machinery, equipment, or real estate. In addition to valuing collateral as of the filing date, a request may be made to determine subsequent decreases in value. These valuation conclusions are necessary to determine which party, the debtor-in-possession or secured creditor, will be granted use of the collateral. Determining the value of collateral is considered a valuation analysis which offers an opinion of value, and is therefore subject to valuation standards.
- Evaluating whether the absolute priority rule is violated. The absolute priority rule specifies the order in which creditors are paid their recoveries in a bankruptcy case. The Supreme Court indicated in 1939 that the absolute priority rule would not be violated if equity holders gave new value to retain their interests, instead of holding those interests on account of their pre-petition interests or claims. To establish new value, the plan proponent must show that the value is (1) new or "fresh", (2) substantial, (3) "money or money's worth", (4) necessary for the reorganization; and, (5) exceeds the value of the retained interest. Determining the value of the retained equity interest is considered a valuation analysis which offers an opinion of value, and is therefore subject to valuation standards.
- Analyzing solvency in the context of avoidance actions or for tax purposes such as the taxability of cancellation-of-debt (COD) income.

It is critical to understand that determination of a valuation conclusion in one context is not necessarily determinative of the valuation conclusion reached in a different context. For example, the value determined for adequate protection may not be the same as the value for confirmation of a plan or liquidation. The purpose, timing and the intended use of the valuation will determine the context of the valuation results, methodology and the relevance of the valuation conclusion.

VALUATION IN U.S. BANKRUPTCY COURT

Valuation in U.S. bankruptcy matters is determined under widely different factual situations, using a variety of different approaches and methods depending on the timing and the circumstances involved and the issue to be resolved. Congress allowed that a court's decision regarding valuation at one stage of a case is not binding at a later stage of the case. And, Congress did not intend to require that courts apply a particular standard or exclusive approach, but rather intended that courts have wide latitude in valuation and should use a flexible approach which can be tailored to fit the circumstances of the case. For example, Section 506(a) of the U.S. Bankruptcy Code contains both valuation guidelines and standards regarding the determination of secured claims. Section 506(a)(1) provides that the value must be "determined in light of the purpose of the valuation and the proposed disposition or use of the subject property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

The House report accompanying the Bankruptcy Code legislation, in its discussion of Section 506(a), made the following statement: "Value does not necessarily contemplate forced sale or liquidation value of the collateral; nor does it always imply a full going concern value. Courts will have to determine value on a case-by-case basis, taking into account the facts of each case and the competing interest in the case."

Given the wide array of cases and the situational or litigation specific valuations performed in these matters regarding a wide range of issues, a review of relevant case precedent will be critical to guide the interpretation of appropriate valuation standards, approaches, methods and computations for each valuation performed.

BUSINESS VALUATION STANDARDS

The AIRA recognizes that professional standards for valuation engagements have been defined in a variety of professional organizations. AIRA also recognizes that the achievement of accreditation credentials has become increasingly important as an indication of professional competency and the fulfillment of training and education in generally accepted methodologies. Many of the standards promulgated by these organizations have been harmonized, and many of the basic standards are somewhat consistent between the Uniform Standards of Professional Appraisal Practice (USPAP), the AICPA's Statement of Standards for Valuation Services (SSVS) and/or other standards with regards to business valuations. For purposes of AIRA's *Standards for Distressed Business Valuation*, the AIRA has no opinion regarding the priority of standards among these organizations. In addition, AIRA has no opinion regarding the appropriate application of any standards that may differ between these organizations as they apply to the facts and circumstances of individual valuation engagements.

The AIRA observes that the valuation standards promulgated by these organizations are intended to be applied across a wide array of business valuation engagements. The AIRA believes that providing guidance and standards of practice regarding the application of general valuation theory to the specialized circumstances found in distressed valuation engagements within the fields of workouts, restructurings and bankruptcy is in the best interests of the valuation profession.

APPLICATION OF STANDARDS IN WORKOUTS, RESTRUCTURINGS AND BANKRUPTCY

The *Standards for Distressed Business Valuation* are intended to serve as guidelines that analysts should follow when performing valuation engagements involving workouts, restructurings and bankruptcy matters. Compliance is voluntary. Refusing to comply with these standards does not violate any law or regulation. However, a false claim of compliance may violate laws or regulations regarding false representations. Compliance with AIRA and other professional standards is the responsibility of the analyst. By choosing to comply with the *Standards for Distressed Business Valuation* the analyst should convey heightened confidence in the integrity of the work and the validity of the results by demonstrating the application of best practices.

If the engagement requires an AIRA member to apply valuation approaches and methods, and to use professional judgment in applying those approaches and methods, then the *Standards for Distressed Business Valuation* would apply when they perform engagements to estimate value that culminate in the expression of an opinion and/or conclusion of value in matters involving business turnaround, restructuring, bankruptcy and insolvency.

STANDARDS FOR DISTRESSED BUSINESS VALUATION

A. PURPOSE AND SCOPE OF THE STANDARDS

1. The *Standards for Distressed Business Valuation* (the "Standards") establishes professional standards for the members of the Association of Insolvency and Restructuring Advisors (AIRA) who are engaged to, or, as part of another engagement, develop an opinion of value for a business, business ownership interest, security, or intangible asset (hereinafter collectively referred to in the Standards as "Subject Interest") in the areas of business turnaround, restructuring and bankruptcy practice. For purposes of the Standards, the definition of a business includes not-for-profit entities or activities. AIRA may update or adopt changes to these Standards when necessary to recognize the evolving nature of the valuation profession and the ongoing development of best practices.

2. The intended professionals that the Standards pertain to include all AIRA members whether or not the person is a financial advisor, accountant, crisis manager, business turnaround consultant, lender, investment banker, attorney, trustee and other persons involved in the fields of business turnaround, restructuring, bankruptcy and insolvency to the extent those persons are designated by the AIRA if they have developed an opinion of value for a Subject Interest.

3. As described in the Standards, the term "Valuation Engagement" refers to an engagement or any part of an engagement (for example, a tax, litigation or acquisition-related engagement) that involves estimating and/or developing an opinion of the value of a Subject Interest. An AIRA member who performs a Valuation Engagement is referred to, in the Standards, as a "Valuation Analyst".

4. Valuation Analysts should be aware of governmental regulations and other relevant professional standards applicable to the engagement and the extent to which they may apply to engagements to estimate value. Compliance with AIRA and other professional standards is the responsibility of the Valuation Analyst.

5. Members of the AIRA are bound by the professional ethics and code of conduct embodied by the AIRA Code Of Professional And Ethical Conduct (see Appendix A) and the AIRA Amended and Restated Bylaws and Conflicts of Interest Policy (see Appendix B).

6. The Standards adopts the International Glossary of Business Valuation Terms (IGBVT), jointly developed by the American Institute of Certified Public Accountants (AICPA), the American Society of Appraisers (ASA), the Canadian Institute of Chartered Business Valuators (CICBV), the National Association of Certified Valuation Analysts (NACVA), and the Institute of Business Appraisers (IBA) are incorporated by reference herein. (See Appendix C).

7. In the process of estimating value as part of an engagement, the Valuation Analyst applies valuation approaches and valuation methods, as described in the Standards, and uses professional judgment. The use of professional judgment is an essential component of estimating value.

8. Notwithstanding the requirements of the Standards, compliance is the responsibility of the Valuation Analyst. No part of the Standards or its requirements shall imply any liability on the part of AIRA or its certification programs for the Certified Insolvency and Restructuring Advisor (CIRA) or Certificate in Distressed Business Valuation (CDBV).

B. <u>EXCEPTIONS TO THE STANDARDS</u>

Litigation and Jurisdictional Exceptions

9. The reporting Standards do not apply to litigation engagements in which a Valuation Analyst is engaged to testify as an expert witness in valuation, accounting, auditing, taxation, or other matters, given certain stipulated or assumed facts. The Valuation Analyst should reasonably disclose all relevant and materially significant stipulations or assumptions orally or in written materials that convey the results; for example, by including footnotes to charts, tables, demonstrative aids and/or written explanations in reports. The other parts of the Standards continue in full force and effect.

10. A valuation performed for any matter before a court, an arbitrator, a mediator or other facilitator, or a matter in a governmental or administrative proceeding (herein referred to individually or collectively as "Controversy Proceedings"), is exempt from the reporting provisions of the Standards. The reporting exemption applies whether the matter proceeds to trial or settles. This exemption applies only to the reporting provisions of the Standards. The developmental provisions of the Standards still apply whenever the Valuation Analyst expresses a conclusion of value.

11. If any part of the Standards differs from published governmental, judicial, or accounting authority, or such authority specifies valuation methods or valuation reporting procedures, then the Valuation Analyst should follow the applicable published authority or stated procedures with respect to that part applicable to the valuation in which the Valuation Analyst is engaged. The Valuation Analyst should reasonably disclose all relevant and materially significant differences in any oral report or written materials that convey the results; for example, by including footnotes to charts and tables and/or written explanations in reports. The other parts of the Standards continue in full force and effect.

12. The Standards are not applicable to engagements that are exclusively performed for the purpose of determining economic damages such as lost-profits unless those determinations include a Valuation Engagement.

    a. If a Valuation Analyst performs a Valuation Engagement to determine the loss of value of a business or intangible asset in connection with financial advisory services being rendered in the areas of business turnaround, restructuring and bankruptcy practice, then the Standards apply.

    b. A Valuation Analyst acting as an expert witness should evaluate whether the particular damages calculation constitutes a Valuation Engagement with respect to the business, business interest, security, or intangible asset or whether it constitutes a lost-profits computation.

    c. Present value calculations of future loss of profits are generally not considered an opinion of value even when Income Approach techniques are applied.

13. The Standards are not applicable to solvency opinions performed in the context of litigation. Typical solvency tests under the U.S. Bankruptcy Code or under state statutes contemplate three tests: (1) whether the Fair Value of assets exceeds liabilities; (2) whether the debtor can pay its obligations as they are due; and,

(3) whether the debtor is adequately capitalized. Only the first test requires a calculation of values regarding assets and liabilities as they are defined under the relevant statutes. None of the tests require the opinion of a specific value estimate, and the ultimate opinion is not quantitative. All three tests simply require individual pass/fail conclusions. Therefore, the Standards do not apply to the overall solvency opinion. Notwithstanding this exclusion, the Standards are intended to offer guidance on the relevant valuation approaches and methods and the factors to be considered when determining the Fair Value of assets and liabilities as they are defined by law and case precedent.

Assignment Specific Exceptions

14. The Standards are not applicable to a Valuation Analyst who participates in estimating the value of a Subject Interest as part of performing an attest engagement defined by Rule 101 of the AICPA Code of Professional Conduct (for example, as part of an audit, review, or compilation engagement).

15. The Standards are not applicable to a valuation that is performed pursuant to governmental regulation with a prescribed methodology, such as an ESOP valuation; however, if such a valuation is being performed in an insolvency context within the scope of these Standards, the analyst is expected to comply with these Standards and is expected to comply with the relevant reporting requirements of these Standards.

16. The Standards are not applicable when the value of a Subject Interest is provided to the Valuation Analyst by the client or a third party, and the member does not apply independently developed valuation approaches and methods, as discussed in the Standards. Sensitivity analysis performed on values determined by third parties is not considered an opinion of value subject to the Standards.

17. The Standards are not applicable to internal use assignments from employers to employee members of the AIRA.

18. The Standards are not applicable to mechanical computations that do not rise to the level of a Valuation Engagement; that is, when the Valuation Analyst does not apply valuation approaches and methods and does not use independent professional judgment and does not issue an opinion or conclusion on value.

    a. Examples of services that do not rise to the level of a Valuation Engagement include: (a) reconciling the debts or claims against the debtor; (b) determining the value of relatively small blocks (relative to the total amount of corporate stock outstanding) of publicly traded stock whose per share price is readily ascertainable; (c) calculating cash and "holdback" requirements under a plan of reorganization; (d) calculating cash "hold back" requirements for tax contingencies; and (e) performing calculations for a client using a predefined model and simply inputting the variables, i.e. Black Scholes options calculations.

    b. Examples of services that do rise to the level of a Valuation Engagement include: (a) valuing a block of publicly traded stock, if the analysis includes consideration of a discount for blockage, lockup, or other contractual or market restrictions such that valuation approaches and methods are applied, and professional judgment is used to determine the Fair Value, Fair Market Value, or other applicable Standard of Value; (b) valuing stock that is not publicly traded; (c) determining the value of legal operating business interests that are pledged as collateral; and (d) computing the Fair Market

Value of assets in a plan of reorganization- if the engagement requires the application of valuation approaches and methods, and the use of professional judgment to estimate the Fair Market Value.

19. The Standards are not applicable when it is not practical or not reasonable to obtain or use relevant information; as a result, the Valuation Analyst is unable to apply valuation approaches and methods that are described in the Standards. Unless prohibited by statute or by rule, a Valuation Analyst may use the client's estimates for compliance reporting to a third party if the Valuation Analyst determines that the estimates are reasonable based on the facts and circumstances known to the Valuation Analyst.

20. The Standards are not applicable to fairness opinions which are considered a professional service intended to opine on a transaction price and specific transaction structure for a specific client/party to the transaction on a specific date. Fairness opinions do not include a defined Standard of Value and Premise of Value for a Subject Interest on a Valuation Date and are not subject to the reporting requirements typically associated with a valuation opinion. While the computations involved in a fairness opinion may resemble standard valuation methods, the actual fairness opinion relates to an overall assessment of the combined terms and price for a transaction deal to a specific party. The fairness opinion is typically required by law for a transaction to proceed and is not a valuation opinion.

21. Providing financial advice, without reference to developing independent values for various assets, is not subject to the Standards. However, if a Valuation Analyst independently calculates a value to illustrate various planning options, the analyst may fall under the Standards. Merely performing sensitivity analysis to value indications provided by third parties or the client or as part of a negotiation is not subject to the Standards. If one or more of the assets for which value is to be determined is a business, business ownership interest, security, or intangible asset and is part of an engagement involving the fields of business turnaround, restructuring, bankruptcy and insolvency, and the client or a third party does not provide the values for these assets, or the Valuation Analyst does not use assumed or hypothetical values as part of the overall engagement, then the Valuation Analyst performing the valuation(s) is subject to the Standards with regard to these assets when determining an opinion of value.

22. The Standards do not apply to the assets or interests which constitute Tangible Assets as defined by the IGBVT (see Appendix C), and which do not constitute a Subject Interest.

Other Exceptions, Limitations and Considerations

23. A Valuation Analyst should be diligent in determining whether an engagement falls within the scope of the Standards.

    a. Unless specifically excluded by the Standards, if the engagement requires a Valuation Analyst to apply valuation approaches and methods to develop an opinion of value, and use professional judgment in applying those approaches and methods, then the Standards would apply.

    b. In determining the scope and requirements of the engagement, a Valuation Analyst should consider the client's needs, or the requirements of a third party for which the valuation is intended, including governmental, judicial, and accounting authorities. In addition, a Valuation Analyst should consider whether other professional standards may apply.

24. In some engagements, the Valuation Analyst and the client agree to the specific approaches or methods the Valuation Analyst will use or the extent of calculation procedures the Valuation Analyst will perform. A restriction or limitation on the scope of the Valuation Analyst's work, or the data available for analysis may be present and known to the Valuation Analyst at the outset of the engagement, or may arise during the course of an engagement. All relevant and materially significant restrictions or limitations should be reasonably disclosed in any oral report or written materials or written materials that convey the results. If, in the course of a Valuation Engagement, restrictions or limitations on the scope of the Valuation Analyst's work or the data available for analysis are so significant that the Valuation Analyst believes that he or she cannot, even with disclosure in the valuation report of the restrictions or limitations, adequately perform a Valuation Engagement leading to a conclusion of value, then the Valuation Analyst should consider terminating the valuation services subject to the Standards and assess the applicability of other consulting/advisory services.

C. OVERALL ENGAGEMENT CONSIDERATIONS

Professional Competence

25. The Valuation Analyst shall undertake only those professional services that the Valuation Analyst or the Valuation Analyst's firm can reasonably expect to be completed with professional competence. Performing a Valuation Engagement with professional competence involves specialized knowledge and skill.

    a. A Valuation Analyst should possess a level of knowledge of valuation principles and theory and a level of skill in the application of such principles that will enable him or her to identify, gather, and analyze data, consider and apply appropriate valuation approaches and methods, and use professional judgment in developing the estimate of value (whether a single amount or a range).

    b. A Valuation Analyst should possess an in-depth knowledge of valuation theory and principles, and how and when to apply them within the context of financial advisory services being rendered in the areas of business turnaround, restructuring and bankruptcy practice that is within the scope of the Standards.

    c. Valuation Analysts are expected to accept only those assignments for which they possess, or can reasonably acquire, the necessary competence to complete each assignment; applying their knowledge and skill with reasonable care and diligence without assuming a responsibility for infallibility of knowledge or judgment.

26. In accordance with the Competence requirements of the AIRA's Code of Professional and Ethical Conduct, Valuation Analysts are expected to maintain an appropriate level of professional competence by ongoing development of their knowledge and skills.

27. In accordance with the Due Care requirements of the AIRA's Code of Professional and Ethical Conduct, Valuation Analysts have a responsibility to exercise due professional care in the performance of services, including adequately planning and supervising the performance of professional services and obtaining sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

a. In general, when developing a valuation conclusion, the Valuation Analyst should analyze the relevant information necessary to accomplish the assignment and all factors that affect the value should be considered.

b. The specific approach and methods selected will be a matter of professional judgment. The relationship among the approaches and methods used and the reasoning supporting the basis for the valuation conclusion must be demonstrated or explained. The extent or content of the demonstration or explanation will depend upon the needs of each engagement consistent with The Valuation Report Standards herein.

28. In accordance with Article VII Section 7 of the AIRA's Amended and Restated Bylaws and the Competence requirements of the AIRA's Code of Professional and Ethical Conduct, AIRA members are expected to perform their professional duties in accordance with relevant laws, regulations and technical standards issued by authoritative bodies, including:

    a. Financial Accounting Standards Board;

    b. U.S. Securities and Exchange Commission; and,

    c. Public Company Accounting Oversight Board.

29. In determining whether he or she can reasonably expect to complete the Valuation Engagement with professional competence, the Valuation Analyst should consider, at a minimum, the following items within the context of the financial advisory services being rendered in the areas of business turnaround, restructuring and bankruptcy practice:

    a. Subject entity and its industry.

    b. Subject Interest.

    c. Valuation Date.

    d. Scope of the Valuation Engagement.

        i. Purpose of the Valuation Engagement.

        ii. Assumptions and limiting conditions expected to apply to the Valuation Engagement.

        iii. Applicable Standard of Value (for example, Fair Value or Fair Market Value), and the applicable Premise of Value (for example, going concern or liquidation).

        iv. Type of valuation report to be issued, intended use and users of the report, and restrictions on the use of the report.

    e. Governmental regulations or other professional standards that may apply to the Subject Interest or to the Valuation Engagement.

    f. Litigation precedent or other professional guidance that may apply to the Subject Interest or to the Valuation Engagement in the areas of business turnaround, restructuring and bankruptcy practice.

Nature and Risks of the Valuation Services and Expectations of the Client

30. In understanding the nature and risks of the valuation services to be provided, and the expectations of the client, the Valuation Analyst should consider the matters in Section C, and in addition, at a minimum, the following:

    a. The proposed terms of the Valuation Engagement.

    b. The identity of the client.

    c. The nature of the interest and ownership rights in the business, business interest, security, or intangible asset being valued, including control characteristics and the degree of marketability of the interest.

    d. The procedural requirements of a Valuation Engagement and the extent, if any, to which procedures will be limited by either the client or circumstances beyond the client's or the Valuation Analyst's control.

    e. The use of and limitations of the report, and the conclusion or calculated value.

    f. Any obligation to update the valuation.

    g. AIRA and other authoritative policies regarding Objectivity and Conflict of Interest.

Independence

31. The AIRA's Code of Professional and Ethical Conduct requires integrity and objectivity in the performance of all professional services. The principle of objectivity imposes the obligation to be impartial, intellectually honest, disinterested, and free from conflicts of interest. In accordance with the Integrity requirements of the AIRA's Code of Professional and Ethical Conduct, AIRA members are expected to avoid actual or apparent conflicts of interest. If necessary, where a potential conflict of interest may exist, the Valuation Analyst should make disclosures and obtain consent of the client, the court, or other relevant users of the valuation information being prepared by the Valuation Analyst.

    a. Disclosures must be full and fair representations of all matters that could reasonably be expected to impair independence and objectivity or interfere with the Valuation Analyst's respective duties to clients and/or the court.

    b. Disclosures must be prominent, and in plain language to communicate the relevant information.

32. The Valuation Analyst may only be an advocate in support of his or her engagement results and must remain independent. The Valuation Analyst must not act as an advocate for any party or issue when performing a Valuation Engagement. Advocacy in any other form is a violation of the objectivity and integrity standards and the requirements for independence in the AIRA's Code of Professional and Ethical Conduct.

    a. Valuation Analysts are personally responsible for maintaining their independence and objectivity and for advocating on behalf of their own results.

b. Valuation conclusions must be the Valuation Analyst's true opinion, free of bias from internal or external pressures, and must be stated in clear and unambiguous language.

33. In order to maintain objectivity and independence, the analyst's compensation must be fee-based and neither the amount nor other terms (such as timing or form of payment) may be contingent on the outcome of the valuation. In addition, the Valuation Analyst must not accept any gift, benefit, compensation or consideration that reasonably could be expected to compromise their independence or objectivity.

34. If valuation services are performed for a client for which the Valuation Analyst or Valuation Analyst's firm also performs an attest engagement as defined by Rule 101 of the AICPA Code of Professional Conduct, the Valuation Analyst should meet the requirements of the AICPA's Interpretation No. 101-3, "Performance of Nonattest Services," under Rule 101, Independence (AICPA, Professional Standards, vol. 2, ET sec. 101.05), so as not to impair the Valuation Analyst's independence with respect to the client.

Establishing an Understanding with the Client

35. The Valuation Analyst should establish an understanding with the client, preferably in writing, regarding the engagement to be performed. If the understanding is oral, the Valuation Analyst should document that understanding by appropriate memoranda or notations in the working papers. Regardless of whether the understanding is written or oral, the Valuation Analyst should modify the understanding if he or she encounters circumstances during the engagement that make it appropriate to modify that understanding.

    a. The understanding with the client reduces the possibility that either the Valuation Analyst or the client may misinterpret the needs or expectations of the other party.

    b. The understanding should include, at a minimum, the nature, purpose, and objective of the Valuation Engagement, the client's responsibilities, the Valuation Analyst's responsibilities, the applicable assumptions and limiting conditions, the type of report to be issued, and the Standard of Value to be used.

Assumptions and Limiting Conditions

36. Assumptions and limiting conditions are common to Valuation Engagements. Relevant material assumptions and limiting conditions should be disclosed either orally or in writing as part of an opinion of value. Illustrative examples of assumptions and limiting conditions for a business valuation are provided in Appendix D. Use of these or other assumptions and limiting conditions by the Valuation Analyst is a matter of professional judgment.

37. A restriction or limitation on the scope of the Valuation Analyst's work, or the data available for analysis, may be present and known to the Valuation Analyst at the outset of the Valuation Engagement or may arise during the course of a Valuation Engagement. Such a restriction or limitation should be disclosed either orally or preferably in writing.

Using the Work of Specialists in the Valuation Engagement

38. When performing a Valuation Engagement, the Valuation Analyst may rely on the work of a third party specialist (for example, a real estate or equipment appraiser) as warranted by specific facts and circumstances that must be considered in relation to the Valuation Analysts' own overall conclusion of value. The Valuation Analyst should disclose either orally or preferably in writing as part of the assumptions and limiting conditions the level of responsibility, if any, being assumed by the Valuation Analyst for the work of the third party specialist. At the option of the Valuation Analyst, the written report of the third party specialist may be referenced and/or included in the Valuation Analyst's report. The Valuation Analyst should also disclose any materially significant differences of opinion that the analyst may have with the specialist's conclusions.

D. ENGAGEMENT DEVELOPMENT

Types of Engagement

39. The AIRA considers the computation of value using valuation approaches and methods that require a member to apply professional judgment in the application of those approaches and methods to be a Valuation Engagement. The AIRA does not draw any distinction between a 'full-scope' or 'detailed' engagement versus a 'restricted use' or 'limited scope' engagement, or between a 'valuation' versus a 'calculation' engagement.[4] A Valuation Engagement under AIRA's Standards results in opinions regarding a conclusion of value. A Valuation Engagement requires narrative disclosure of the assumptions, methods and approaches used to determine a conclusion of value. In certain situations where third party users are knowledgeable of the business, omission of certain narrative disclosures regarding the business, its assets and liabilities can be appropriate. The degree to which narrative disclosures may be omitted to satisfy the purpose, facts and circumstances of each particular engagement is a matter of professional judgment.

    a. *Valuation Engagements* – A Valuation Engagement occurs when a Valuation Analyst determines an estimate of the value of a Subject Interest by performing appropriate valuation procedures, as outlined in these Standards, and is free to apply the valuation approaches and methods he or she deems appropriate in the circumstances. The Valuation Analyst expresses the results of the Valuation Engagement as a conclusion of value, which may be either a single amount or a range.

    b. *Performance of a Valuation Engagement* – A Valuation Analyst performs a Valuation Engagement when (1) the engagement calls for the Valuation Analyst to estimate the value of a Subject Interest, and (2) the Valuation Analyst estimates the value and is free to apply the valuation approaches and methods he or she deems appropriate in the circumstances. The Valuation Analyst expresses the results of the valuation as a conclusion of value; the conclusion may be either a single amount or a range.

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[4] These types of engagement distinctions are identified by other appraisal organizations such as the AICPA, ASA and others. AIRA has no opinion regarding the priority of standards among these organizations, and the appropriate application of any standards that may differ between these organizations as they apply to the facts and circumstances of individual Valuation Engagements.

Valuation In Restructurings, Workouts and Bankruptcy

40. Valuation analysis is central to almost every part of the turnaround, workout and bankruptcy process. Whether the intended use of the valuation is to establish the value of the enterprise for various purposes including recovery action, to assess a turnaround plan, or establish a basis for collateral values, an appreciation of valuation practice, its nuances, current developments and best practices are essential to a well-seasoned Valuation Analyst.

41. Valuation is the process of determining the price of an asset as of a specific point in time; and central to this exercise is the conviction that value is a function of the assets' fundamental characteristics of growth, risk, and cash flows at the time of the valuation.

42. When performing or assessing value in any forum, it is important to recognize that the practice of valuation is an art, not a science. Numerous objective and subjective factors are employed in this process, and the value of an asset can be substantially influenced by a number of assumptions, normalizing adjustments and hypothetical conditions. The application of assumptions, financial restatements, normalizing adjustments and hypothetical conditions should be adequately disclosed in the valuation report.

43. It is difficult to determine the exact cause or causes of financial difficulty in any individual turnaround, workout and bankruptcy situation. Often it is the result of several factors which leads to an event that precipitates failure. The fundamental cause(s) may not be obvious from the evidence at hand. Therefore, it is important for the Valuation Analyst to assess the symptoms of business problems to determine the underlying cause(s) and their impact on financial results. The extent to which these problems, or their resolution, may be taken into account in a Valuation Engagement is a matter of professional judgment within the context of the valuation assignment being performed under the facts and circumstances of the situation being analyzed. The application of assumptions, financial restatements, normalizing adjustments and hypothetical conditions should be adequately disclosed in the valuation report.

Hypothetical Conditions

44. Hypothetical conditions affecting the Subject Interest may be required in some circumstances. For example, to assume the terms of a proposed plan of reorganization prior to approval and confirmation of such plan would constitute a hypothetical condition. When a Valuation Analyst uses hypothetical conditions during a Valuation Engagement, he or she should indicate the purpose and relevance for including the hypothetical conditions and disclose these conditions in the valuation report.

Subsequent Events and Hindsight

45. The "Valuation Date" is the specific date at which the Valuation Analyst estimates the value of the Subject Interest and concludes on his or her estimation of value. An event that could affect the value may occur subsequent to the Valuation Date; such an occurrence is referred to as a 'subsequent event'. Subsequent events also include conditions that were not known or knowable at the Valuation Date, including conditions that arose subsequent to the Valuation Date. A critical issue in valuation is the use of subsequent information and/or subsequent events and the reliance, if any, that should be put on such information in the valuation subsequent to the

Valuation Date. Generally accepted valuation theory would typically not permit those subsequent events or conditions to be reflected; however, examples drawn from various case matters and treatises may allow their recognition in certain circumstances for specifically intended purposes:

a. A distinction may usefully be drawn between later-occurring events which affect Fair Market Value as of the Valuation Date, and later-occurring events which may be taken into account as evidence of Fair Market Value as of the Valuation Date.

b. If a buyer and seller were likely to have foreseen the subsequent sale, and other activities or event, then those later occurring events could affect what a willing buyer would pay and what a willing seller would demand.

c. It may be appropriate to consider sales of properties or interests occurring subsequent to the Valuation Date as an indication of value if the properties or interests involved are indeed comparable to the Subject Interest.

d. Appropriate adjustments may be needed to account for differences between the Valuation Date and the date of the later-occurring events. For example, there may have been changes in general inflation, people's expectations with respect to that industry, performances of the various components of the business, technology, and the provisions of tax that might affect Fair Market Values.

e. Information originating subsequent to the Valuation Date may be considered if it tends to shed light on a fair and accurate assessment of the asset or liability as of the pertinent date. Thus, it is not improper hindsight to attribute current circumstances which may be more correctly defined as current awareness or current discovery of the existence of a previous set of circumstances.

f. The matrix within which questions of insolvency and valuation exist in bankruptcy demands that there be no rigid approach taken to the subject. Because the value of the Subject Interest varies with time and circumstances, the Valuation Analyst must be free to arrive at the valuation conclusion by the most appropriate means.

46. Two dates are essential to a valuation report: (i) the effective date; and (ii) the report date. The effective date establishes the context for the value opinion, while the report date indicates the perspective from which the Valuation Analyst is examining the market. There are three categories of effective dates: (i) retrospective; (ii) current; and (iii) prospective which can be described as follows:

a. Retrospective valuation reports (effective date of the valuation conclusion is prior to the date of the report) may be required for property tax matters, estate or inheritance tax matters, financial reporting, condemnation proceedings, suits to recover damages, and similar situations.

i. A retrospective valuation report is complicated by the fact that the Valuation Analyst may already know what occurred in the market after the effective date of the valuation conclusion. Data subsequent to the effective date may be considered in developing an opinion on retrospective value as a confirmation of trends that would reasonably be considered by a buyer or seller as of that date.

ii. The Valuation Analyst should determine a logical cut-off for the use of relevant data, because at some point distant from the effective date, the subsequent data may no longer reflect the information upon which the relevant market acted. This is a difficult determination to make. Studying the market conditions as of the date of the valuation conclusion can assist the Valuation Analyst in judging where he or she should make this cut-off. If there is evidence that market data reported subsequent to the effective date is inconsistent with market expectations as of the effective date, then the effective date should be used as the cut-off date for data considered by the Valuation Analyst.

b. Current valuation reports occur when the effective date of the valuation conclusion is contemporaneous with the date of the report.

c. Prospective valuation reports (effective date of the valuation conclusion is subsequent to the date of the report) may be required for valuations of Subject Interests related to proposed developments and/or proposed restructuring plans.

47. Notwithstanding the preceding, the valuation procedures being performed will depend on the purpose of the valuation which is being prepared for the intended user. The unique facts and circumstances of the situation, relevant case law and the intended use of the valuation may permit the use of 'hindsight', or the knowledge of events occurring after the Valuation Date, in the interpretation of subsequent events and their impact on the valuation conclusion. For example, matters involving fraud may have been known or knowable at the Valuation Date and yet the financial impact of the fraud may not have been quantified until some subsequent date. In another example, lost profits calculations may employ hindsight in the computation of damages which would not have been incurred but for the presence of a damaging event. Ultimately, the use or application of any hindsight regarding subsequent events will depend on the purpose of the valuation and the intended user and should be fully disclosed in the valuation report.

Valuation Engagement

48. In performing a Valuation Engagement, the Valuation Analyst should: analyze the Subject Interest, consider and apply appropriate valuation approaches and methods, reconcile the indication of value to reach a conclusion of value, and maintain appropriate documentation.

49. Valuations involve an ongoing process of gathering, updating, and analyzing information. Accordingly, the sequence of the requirements and guidance in the Standards may be implemented differently at the option of the Valuation Analyst.

E. STEPS IN THE BUSINESS VALUATION

50. Before performing a Valuation Engagement, information needs to be gathered by the Valuation Analyst related to the subject asset or business. Most, if not all of this information will have some bearing on the various valuation approaches and methodologies used by the Valuation Analyst as well as the ultimate valuation conclusion. This initial information includes:

a. Legal name of the company.

b. Legal Ownership interest being valued (common stock, preferred stock, business enterprise, specific assets).
c. Subject ownership interest being valued (common stock, preferred stock, business enterprise, specific assets).
d. Purpose of the valuation.
e. The Premise of Value necessary for the assignment.
f. Standard of Value necessary for the assignment.
g. Valuation Date.

Define the Purpose of the Valuation

51. No single valuation approach and/or method is universally applicable to all valuation purposes. The context in which the valuation is to be used is a critical factor. It is important to document the intended purpose of each valuation as well as identify the client for whom the valuation was prepared and any other intended users. The intended use of the valuation general determines the Standard of Value and the Premise of Value.

Premise of Value

52. Identify the *"Premise of Value"*—The Premise of Value is defined by the IGBVT as: "an assumption regarding the most likely set of transactional circumstances that may be applicable to the subject valuation." The appropriate Premise of Value will depend on the facts and the circumstances of the specific valuation. The Premise of Value is typically a function of the highest and best use in a control valuation; however, a Premise of Value may be legally mandated or otherwise determined by the intended user of the valuation. Valuation premises include:

a. *"Going Concern"*—The business is assumed to continue to operate as a going concern and the value is based upon the income-generating characteristics of all of the tangible and intangible assets as a going concern enterprise.

b. *"Value as a Mass Assemblage of Assets"*—Assumes that assets are capable of being, but are not currently, part of an income producing business. It also assumes that the assets will be sold in aggregate. These assets may include certain intangible assets such as patents, trademarks, copyrights, and computer software, but not an assembled workforce, goodwill, or other assets typically associated only with a going concern.

c. *"Liquidation Value*" – Liquidation Value—the net amount that would be realized if the business is terminated and the assets are sold piecemeal. Liquidation values do not necessarily mean the amount that would be obtained in a forced sale; most likely, they refer to the amount that could be obtained in an orderly liquidation. The value of a business or assets in an orderly liquidation assumes a reasonable time period for the liquidation of the assets at market prices under normal market conditions.

i. *"Liquidation Value – Orderly"*—Assumes the assets are sold piecemeal with a reasonable amount of time allowed for market exposure. The assumed time period is very facts and circumstances specific and depends on the type of assets being liquidated. There may be instances where an orderly liquidation can take 12-24 months or an orderly liquidation could be less than 30 days.

ii. *"Liquidation Value – Forced"*—Assumes the assets are sold piecemeal with less than normal market exposure as in a distressed sale. The assumed time period for a forced liquidation is very facts and circumstances specific and depends on the type of assets being liquidated. There may be instances where a forced liquidation can take several months or less than 30 days.

iii. *Considerations Regarding Liquidation Expenses*—When determining liquidation values, certain outlays that would be necessary if the debtor's estate was liquidated may be considered depending upon the context of the valuation. Typical examples include the expenses of administration. The liquidation value of the business may be a projected valuation of asset recoveries net of estimated expenses. In the bankruptcy context, liquidation analysis typically refers to the sum of the net proceeds of the sale of assets and recoveries on bankruptcy claims, net of any expenses to recover those funds. Note, the costs of liquidation may not be included when determining the Fair Value of assets for solvency tests performed under fraudulent transfer or preference litigation.

iv. *Considerations Regarding Financial Reporting*—When presenting asset and liabilities for financial reporting purposes liquidation value is measured by what is expected to be collected (net realizable value) during the course of liquidation. Assets are valued at their net realizable value. Asset values should be adjusted to the amount of cash or other consideration expected to be realized. Costs of monetizing the assets should be estimated. Administrative costs through completion of the liquidation must be estimated.

53. *Considerations Involving the Premise of Value*—When valuing a controlling interest in a non-bankruptcy engagement, the Premise of Value may depend on the Valuation Analyst's assessment of the highest and best use of the entity and its assets. There are frequently non-bankruptcy valuation engagements that assume "value-in-place" or an Investment Value standard, which may or may not be the highest and best use. In bankruptcy engagements, care should be taken to ensure that the highest and best use is reasonably available to the debtor and Subject Interest in question, and is not otherwise predetermined by the U.S. Bankruptcy Code, case law precedent, or other applicable laws. For example, in a Chapter 7 case, the required Premise of Value is the liquidation basis, and orderly liquidation values are typically used. In certain bankruptcy matters the Premise of Value is less clear and may require consideration of court precedent, the actual operating characteristics of the company, and the intended use of the Subject Interest. Generally, unless clear and convincing evidence exists to the contrary, bankruptcy courts often require going concern values. If the bankrupt entity is a going concern at the time of a transfer of assets, the Subject Interest usually is valued as a going concern except for operations/assets that are excess, discontinued or non-viable. When performing a valuation retrospectively, the following types of questions should be considered by the Valuation Analyst when selecting the Premise of Value:

a. Did the company have a recent history of losses?
b. Was the company being operated under "business as usual" conditions?
c. Was the company able to pay its bills on time, or was it on a COD basis?
d. What representations were being made to trade creditors?

e. Was the company, or parts of it, being offered for sale, and if so, on what basis?
f. Were crisis management or turnaround professionals employed?
g. Were key employees or substantial portions of the workforce leaving?
h. What was the local or national press reporting about the company's activities?

Standard of Value

54. Identify the *"Standard of Value"*—The Standard of Value is the type of value being utilized in a specific engagement; for example, Fair Market Value, Fair Value, Investment Value, net realizable value, etc. The appropriate Standard of Value will depend on the facts and circumstances of the specific valuation, the intended user and any relevant statutory or legal specifications. In many situations, the Standard of Value may be legally mandated.

a. *"Fair Market Value"* incorporates the concepts of a hypothetical willing buyer and seller, an arms length transaction, reasonable knowledge of relevant facts, and a reasonable time for market exposure. The IGBVT defines Fair Market Value as:

> "The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts. (NOTE: In Canada, the term *"price"* should be replaced with the term *"highest price"*.)".

b. *"Investment Value"* differs from Fair Market Value since it is the value to a particular buyer rather than a hypothetical buyer and it may reflect the synergies that this buyer brings to the transaction; including, for example, estimates of future earning power by the buyer, anticipated operational synergies with the buyer, the cost of capital of the buyer (based on both financing rates and the buyer's proposed capital structure), as well as a tax rate specific to the buyer. IGBVT defines Investment Value as:

> "The value to a particular investor based on individual investment requirements and expectations. {NOTE: in Canada, the term used is *"Value to the Owner"*.}"

c. *"Intrinsic value"* is the perceived price of a specific asset (or investment) based on the fundamental financial characteristics of the investment. It is not market driven and is also often referred to as fundamental value. It is the Standard of Value often used by security analysts in determining the true or real value of a stock. IGBVT defines Intrinsic Value as:

> "The value that an investor considers, on the basis of an evaluation or available facts, to be the "true" or "real" value that will become the market value when other investors reach the same conclusion. When the term applies to options, it is the difference between the exercise price and strike price of an option and the market value of the underlying security."

d. *"Fair Value"* is a judicially mandated standard that may or may not reflect any of the aforementioned standards of value. For example, in most states, it is the statutory Standard of Value for dissenting stockholders' appraisal rights, and it is also used in valuations for state minority oppression cases. The determination of what Fair Value represents differs across jurisdictions. Application of a Fair Value standard will depend on the facts and circumstances of the litigation, the relevant laws for the jurisdiction, and case law precedent.[5]

e. *Interpretations of Fair Value*—"Fair Value" is not defined by the U.S. Bankruptcy Code. Fair Value is often interpreted by U.S. bankruptcy case law as "Fair Market Value". Other terms interpreted by the courts to have a similar meaning to Fair Value include "reasonably equivalent value" and "present fair salable value." The Standard of Value referenced in the State Fraudulent Transfer Act is fair valuation, and the Standard of Value referenced in the State Fraudulent Conveyance Act is present fair salable value. The exact interpretation of these terms is subject to evolving case law. The Valuation Analyst should consult with legal counsel regarding the interpretation of these terms for the jurisdiction and venue involved within the context of a particular Valuation Engagement. That interpretation may affect the selection and application of relevant valuation approaches and methods.

   i. Most interpretations of Fair Market Value acknowledge that the willing buyer and seller are hypothetical persons who are dealing at arms length, rather than any particular buyer and seller. The definition implies that the parties have the ability and the willingness to buy or to sell. There is general agreement that Fair Market Value incorporates prevailing economic and market conditions as of the Valuation Date.

   ii. The definition of Fair Value applies to certain specific circumstances which can be defined differently based on the legal context. For example, Fair Value may or may not include a willing buyer or seller with neither under compulsion. Fair Value may not require equal knowledge or reasonable knowledge of both parties. Fair Value may include the terms and consideration from an actual transaction when determining the meaning of a *'fair'* value or a *'fair value'*.

[5] Note, the AICPA has its own definition of Fair Value used solely for financial reporting purposes. In the context of financial reporting, Fair Value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. Source: Financial Accounting Standards Board definition in Statement on Financial Accounting Standards (SFAS) No. 157, Fair Value Measurements, as used in the context of Generally Accepted Accounting Principles (GAAP) (Effective 2008). SFAS No. 157 is now encompassed in Accounting Standards Codification Topic 820 (ASC 820). The AICPA's definition of Fair Value is separate from the legal interpretation of Fair Value as described throughout the AIRA's Standards for Distressed Business Valuation.

iii. The term *fair* leaves the court wide latitude for interpretation under the relevant context. The *fair* value of an asset could be its market value, its intrinsic value, or an investment value. The term *fair market value* is more limited to finding the value an asset would have in a hypothetical exchange. In general, most Fair Value analyses consider the implied values of a hypothetical transaction; however, when the facts and circumstances of an actual transaction which was subjected to the market are considered, *'fair'* value or *'fair value'* may be interpreted as a test of the terms of the actual deal (i.e. whether reasonably equivalent value was exchanged).

iv. The Valuation Analyst should consult with legal counsel regardingthe interpretation of these terms for the jurisdiction and venue involved as they are being applied to the particular facts and circumstances of the valuation assignment.

Analysis of the Subject Interest

55. The analysis of the Subject Interest will assist the Valuation Analyst in considering, evaluating, and applying the various valuation approaches and methods to the Subject Interest. When analyzing the Subject Interest, the Valuation Analyst should consider financial and nonfinancial information. The type, availability, and significance of such information vary with the Subject Interest. The nature and extent of the information needed to perform the analysis will depend on, at a minimum, the following:

a. Nature of the Subject Interest.
b. Scope of the Valuation Engagement.
c. Valuation Date.
d. Intended use of the valuation.
e. Applicable Premise of Value.
f. Applicable Standard of Value.
g. Assumptions and limiting conditions.
h. Applicable governmental regulations or other professional standards.

Identify and Define the Legal Ownership Interest

56. The Valuation Analyst should obtain, where applicable and available, legal ownership information when analyzing an equity interest (as opposed to the business enterprise as a whole) in order to:

a. Determine the type of ownership interest being valued and ascertain whether that interest exhibits control characteristics.

b. Analyze the different ownership interests of other owners and assess the potential effect on the value of the Subject Interest.

c. Understand the classes of equity ownership interests and rights attached thereto.

d. Understand the rights included in, or excluded from, each intangible asset.

e. Understand other matters that may affect the value of the Subject Interest, such as:

i. For a business, business ownership interest, or security: shareholder agreements, partnership agreements, operating agreements, voting trust agreements, buy-sell agreements, loan covenants, restrictions, and other contractual obligations or restrictions affecting the owners and the Subject Interest.

ii. For an intangible asset: specific identification and recognizable description, legal rights, licensing agreements, sublicense agreements, nondisclosure agreements, development rights, commercialization or exploitation rights, restrictions on use and other contractual obligations.

57. The Valuation Analyst should identify and define the particular subject asset being valued. As it relates to a business, this may include the name of the entity, the legal form of the organization, the state of incorporation, the date of incorporation, the number of shares, and so forth. Furthermore, it is requisite to state whether the interest being valued is that of the entire enterprise or that of equity only. If the purpose of the valuation is to determine the value of equity, then the Valuation Analyst should determine whether the definition of equity includes only common shareholders, or preferred shareholders as well. For many of the purposes of valuation performed in workouts, restructurings or bankruptcy, the legal interest being valued will be the company, or the business enterprise. Oftentimes, the equity interest is out of the money and ascribed zero value. Other legal interests that may be valued include secured claims (such as an asset-based loan or an equipment lease) and unsecured claims (equity, bonds, trade claims).

58. Properly defining the ownership characteristics of the legal interest to be valued often dictates the use of valuation approaches and methods used in the valuation process. In this context the Valuation Analyst must understand whether the interest being valued has control characteristics and whether such interest is readily marketable. As it relates to control, minority interests do not enjoy the same rights as controlling interests and as such are generally worth less. Controlling interest rights may include the ability to:

a. Sell or liquidate the business enterprise.
b. Appoint or change management or the board of directors.
c. Determine compensation and perks.
d. Set policy and change the course of business.
e. Negotiate and complete mergers, acquisitions, divestitures.
f. Determine the capital structure and dividend payout.

59. The Valuation Analyst should understand the degree to which the interest being valued can be converted to cash at normal transaction costs. For example, a minority interest in a publicly traded stock is very marketable as it can be sold today and converted to cash within three days. A minority position in a closely-held family business, however, does not enjoy the same advantages, and all other things being equal, is worth less than a readily marketable position.

Select Valuation Date

60. The use of a specific Valuation Date is critical from both an analytical and legal perspective. Often, value is determined as of some critical date and industry conditions or company circumstances may have changed subsequent to this date. These subsequent changes in conditions may have a material impact on the results

of the valuation. In workouts, restructurings and bankruptcy situations, the Valuation Date may have significant legal or negotiating implications. For example, for the plan of reorganization, the Valuation Date should be based upon the proposed emergence date, and for fraudulent conveyance, the Valuation Date will be the date of the transfer. When determining value for adequate protection, the Valuation Date is often the bankruptcy petition date.

Compile Nonfinancial Information

61. The Valuation Analyst should, as available and applicable to the Valuation Engagement, obtain sufficient nonfinancial information to enable him or her to understand the subject entity, including its:

    a. Nature, background, and history.
    b. Facilities.
    c. Organizational structure.
    d. Management team (which may include officers, directors, and key employees).
    e. Classes of equity ownership interests and rights attached thereto.
    f. Products or services, or both.
    g. Economic environment.
    h. Geographical markets.
    i. Industry markets.
    j. Key customers and suppliers.
    k. Competition.
    l. Business risks.
    m. Strategy and future plans.
    n. Governmental or regulatory environment.

Compile Financial Information

62. The Valuation Analyst should obtain, where applicable and available, financial information on the subject entity such as:

    a. Historical financial information (including annual and interim financial statements and key financial statement ratios and statistics) for an appropriate number of years.
    b. Prospective financial information (for example, budgets, forecasts, and projections).
    c. Comparative summaries of financial statements or information covering a relevant time period.
    d. Comparative ratio analysis including common size financial statements for the subject entity for an appropriate number of years.
    e. Comparative ratio analysis including common size industry financial information for a relevant time period.
    f. Income tax returns for an appropriate number of years.
    g. Information on compensation for owners including benefits and personal expenses.
    h. Information on key man or officers’ life insurance.
    i. Management’s response to inquiry regarding:
        i. Advantageous or disadvantageous contracts.
        ii. Contingent or off-balance-sheet assets or liabilities.
        iii. Information on prior sales of company stock.

j. Sales, cost and margins by product, division, profit center subsidiary, customer and/or geographic/market area.
k. Management financial reporting listing statistics, metrics and other operating data (including non-financial data such as square footage, number of customers, attrition rates, internet traffic, etc.).

63. The Valuation Analyst should read and evaluate the information to determine that it is reasonable for the purposes of the engagement.

Identify Key Assumptions and Limiting Conditions

64. It is important to identify, and to disclose within the valuation report, the key assumptions and limiting conditions under which the valuation was prepared. For example, factors affecting the selection of the Valuation Date, use of subsequent information, restrictions upon the uses of valuation approaches or methods, assumptions that were provided by the client or other analysts, and any other relevant factors should all be disclosed since they affect the nature of the Valuation Engagement and the interpretation of the valuation conclusion. Illustrations of limiting conditions are included in Appendix D.

Identify Valuation Approaches

65. The Valuation Analyst should use the valuation approaches and methods that are appropriate for the Valuation Engagement. General guidance on the use of approaches and methods appears in the following paragraphs. Detailed guidance on specific valuation approaches and methods and their applicability is outside the scope of the Standards. The applicable valuation approach or approaches will be determined by the facts and circumstances of the valuation. The Valuation Analyst should consider and document the application of the three most common valuation approaches or the reasons for not pursuing application and calculation of one or more approaches or methods.

66. The selection of the appropriate valuation approach and methods will depend on the purpose and intended use of the valuation, the facts and circumstances involved, available data and the professional judgment of the Valuation Analyst. Generally, the Income Approach using the Discounted Cash Flow Method may be the most appropriate valuation procedure for distressed business valuation, with relevant comparisons made to the guideline transaction approaches if possible. The rationale for the selection of the approaches and methods used in the valuation should be fully disclosed in the valuation report.

67. The following paragraphs summarize the general principles underlying the valuation approaches and methods available to the Valuation Analyst.

    a. *"The Income Approach"* assumes that the Fair Market Value of an asset is equal to the present value of all future benefits expected to be generated by the asset. The two most common methods in the Income Approach are the "Single Period Capitalization Method" (also known as the "Capitalization of Earnings Method") and the "Discounted Cash Flow Method". The individual growth pattern of revenue and earnings and the state of maturity of the subject company will dictate which method is appropriate.

i. *In the Single Period Capitalization Method,* the next years' projected stabilized cash flows are divided by the capitalization rate which reflects both the risk of future cash flows and the long term expected growth rate of the business. The Valuation Analyst should consider the following:

(a) Detailed analysis of income and cash flow projections to identify significant changes in revenue, expense and income assumptions and related cash flow items.
(b) Analysis of operating versus non-operating assets.
(c) Normalization adjustments.
(d) Nonrecurring revenue and expense items.
(e) Taxes.
(f) Capital structure and financing costs.
(g) Appropriate capital investments.
(h) Working capital investments.
(i) Current versus future tax rates and the impact of 'net operating losses' and 'cancellation-of-debt' income.
(j) Noncash items.
(k) Impact of bankruptcy or restructuring costs on cash flows.
(l) Impact of asset acquisitions or divestitures on cash flows.
(m) Impact of significant dividends, stock buybacks or other investor cash flows.
(n) Qualitative judgments for risks used to compute discount and capitalization rates.
(o) Expected changes (growth or decline) in future benefits (for example, earnings or cash flows).

ii. *In the Discounted Cash Flow Method,* projected cash flows are discounted by the subject company's cost of capital which reflects the risk of achieving those future cash flows. In addition to the items in the preceding paragraph, the Valuation Analyst should consider:

(a) Forecast/projection assumptions versus perpetuity assumptions regarding stable sustainable results plus growth.
(b) Forecast/projected earnings or cash flows versus perpetuity assumptions regarding stable sustainable results plus growth.
(c) Changes in working capital, capital expenditures, taxes and other items affecting cash flows during the forecast/projection period versus perpetuity assumptions.
(d) Terminal value and its method of computation, i.e. use of exit multiples versus Gordon Growth model, and the growth assumptions into perpetuity.

iii. *For an Intangible Asset,* frequently used Income Approach valuation methods are:

(a) *Split Profits Method* – The combined profit from all relevant business activities involving tangible assets and intangible assets is allocated to each asset or asset class based upon the capital employed, the functions performed, the rates of return required and/or the risks assumed by each class of assets.

(b) *Excess Income Method (Residual Income Method)* – First, a market return is assigned to the routine economic activities or investments involving financial and tangible assets. Second, the residual profits after the market return on financial and tangible assets represents the income stream available to value the intangibles.

(c) *Residual Income Method (Excess Income Method)* – First, a fair rate of return is assigned to the net tangible and intangible assets and net working capital assets used in the intellectual property licensee's business. Second, the economic income or cash flows earned by the intellectual property licensee's company are quantified. Third, the actual income that exceeds the required level of economic income attributable to the intellectual property is determined and used to estimate a royalty rate for use of the intellectual property.

(d) *Royalty Income Method* – A market royalty rate, often expressed as a percentage of revenue, is assigned to the subject entity that owns or operates the intangible asset to determine the cash flows avoided from not paying third party license(s) for the use of that intangible asset.

(e) *Incremental Income / Cost Decrement Methods* – Cash flows are analyzed with and without the intangible asset to determine the net cash flows attributable to owning or leasing the asset.

(f) *Build-Out Method (Greenfield Method)* – Assumes all of the assets except the intangible asset are in place. Alternatively assumes the only asset in place is the intangible asset and all others are acquired or built-out. The economic benefit and corresponding cash flows attributable to the intangible asset are isolated and analyzed to determine value.

(g) *Comparative Income Method* – Compares the excess income earned by the owner of the intangible asset to income earned by a benchmark group of guideline companies that do not own the actual or comparable intangible asset.

iv. *For an Intangible Asset,* the Valuation Analyst should also consider, when relevant:

(a) Cost, date and manner of acquisition.
(b) Information, transactions or agreements involving the use, sale, transfer or disposition of the intellectual property.
(c) For intellectual property under development, the length of time and costs of completion and the costs of bringing the property to market.
(d) Remaining useful life and prospects for near and long term market demand.
(e) Current and anticipated future use of the intangible asset.
(f) Rights or restrictions attributable to the intangible asset.
(g) Position of intangible asset in its life cycle.
(h) Appropriate discount rate for the intangible asset.
(i) Appropriate capital or contributory asset charge, if any.

(j) Research and development or marketing expense needed to support the intangible asset in its existing state.
(k) Allocation of income (for example, incremental income, residual income, or profit split income) to intangible asset.
(l) Whether any tax amortization benefit would be included in the analysis.
(m) Discounted multi-year excess earnings.
(n) Market royalties.
(o) Relief from royalty.
(p) Contributory charges that burden the intangible asset revenue stream for the use of other assets to generate the income (such as assembled workforce, working capital, fixed assets, etc.).

v. For Valuation Engagements involving distressed businesses and their interests which are involved in workouts, restructurings or bankruptcy, the Valuation Analyst should carefully consider the unique factors underlying the selection of an appropriate capitalization rate or discount rate. These factors should be considered within the context of a distressed valuation that is being performed for a specified purpose involving the Subject Interest. Examples of issues the Valuation Analyst should consider include:

(a) Selecting an industry based cost of debt versus actual current cost of debt or future restructured cost of debt. Cost of debt and the relative weighting of debt in the capital structure can be affected by measures of the market value of debt versus the book value of debt, measures of debt Beta over varying lengths of time, actual versus targeted leverage, the impact of taxes and other items which should be considered.
(b) Selecting an industry based cost of equity versus risk adjusted cost of equity, either current or in the future forecast. Cost of equity and the relative weighting of equity in the capital structure can be affected by measures of the market value of equity returns, measures of equity Beta over varying lengths of time, actual versus targeted leverage, differing measures of equity risk premium such as backward or forward looking, the impact of taxes and other items which should be considered.
(c) Selecting an industry based optimal capital structure versus actual capital structure, either current or in the future forecast or varying the discount rates and capital structures over time or into perpetuity.
(d) Evaluating the restructuring, or execution, risk.
(e) Evaluating the relevance of benchmarking.
(f) Considering the relevance of debt ratings, actual or implied, and assessments of default risk.
(g) Determining the impact of taxes on cash flows and matching those cash flows to the appropriate capitalization or discount rates.
(h) Considering specific company risk factors.
(i) Considering measures of systematic versus unsystematic risk.

(j) Evaluating the access to capital markets such as size, ability to issue equity and debt offerings and probabilities of success, relative impact of minority or controlling interests, access to venture capital, current and future debt and equity ratings, default risk, and other items that could impact on cost of capital.

b. *"The Market Approach"* assumes the value of the subject company is equal to the values assessed by the market for similar or guideline companies. The two primary methods within the Market Approach are the "Guideline Public Company Method" and the "Merger and Acquisition Method". A third commonly used method is the "Company Specific Sales Method" or "Historical Internal Transactions Method" which examines actual transactions that have taken place in the company's ownership interests or securities. Another commonly used valuation method of the Market Approach is the "Stock and Debt Method" (also referred to as the "Observable Market Value Method") for companies with publicly traded equity and/or debt securities, in which the market value of debt and equity securities are aggregated (and discounts and premiums are applied, if necessary) to estimate value. In each of the methods, the Valuation Analyst calculates market multiples and then applies the multiples to the subject company's financial results in order to derive an indication of Fair Market Value of the company.

i. Three frequently used Market Approach valuation methods for intangible assets are:

(a) *Comparable Uncontrolled Transactions Method*—Based on arms length sales or licenses of guideline intangible assets.
(b) *Comparable Profit Margin Method (Profit Split Method)*—Based on comparison of the profit margin earned by the subject entity that owns or operates the intangible asset to profit margins earned by guideline companies.
(c) *Relief From Royalty Method*—Based on the royalty rate, often expressed as a percentage of revenue that the subject entity that owns or operates the intangible asset would be obligated to pay to a hypothetical third-party licensor for the use of that intangible asset.

ii. For the methods involving guideline intangible assets (for example, the Comparable Profit Margin Method), the Valuation Analyst should consider the subject intangible asset's remaining useful life relative to the remaining useful life of the guideline intangible assets, if available.

iii. The analysis of comparable measures of value requires relevance and uniformity in the methods used to compute the measures. When applying the methods listed in this paragraph or other methods to determine valuation pricing multiples or metrics, the Valuation Analyst should consider:

(a) Qualitative and quantitative factors to determine the relevant comparisons such as industry selection, size, growth, liquidity, profitability, turnover, leverage, business expectations, business risk and financial risk.

(b) Arms length transactions and prices.

(c) The dates and, consequently, the relevance of market data and financial data.

(d) Selection of distressed versus healthy transactions for comparison.

(e) The extent to which the transaction data is comparable and making necessary adjustments such as: controlling versus non-controlling transactions, control premiums, assumption of debt or cash in the transactions, impact of financial versus strategic buyers, differing forms of consideration, and the impact of taxes.

(f) The extent to which the financial data is comparable and making necessary adjustments such as: measures of excess cash, measures of distress, forward or trailing multiples, market values versus book values of debt, market values versus book values of fixed assets, the affect of acquisitions or divestitures, the impact of 'net operating losses' or 'cancellation-of-debt' and other tax items.

iv. The Valuation Analyst should set forth in the report, in oral disclosures and/or in the work file the rationale and support for the valuation methods used.

v. Although technically not a valuation method, some Valuation Analysts use rules of thumb or industry benchmark indicators (collectively referred to as "rules of thumb") in a Valuation Engagement. A rule of thumb may offer a reasonableness check against other methods but should generally not be used as the only method to estimate the value of the Subject Interest. The usage of these rules should clearly be disclosed, as well as a statement indicating there is a higher risk of error or imprecision.

vi. For Valuation Engagements involving workouts, restructurings or bankruptcy, the Valuation Analyst should carefully consider the impact of additional factors (both qualitative and quantitative) and apply appropriate adjustments including:

(a) Selecting the appropriate multiple or metric that measures revenues and profitability.

(b) Adjusting for the future impact of restructuring initiates on operations and earnings.

(c) Adjusting for the cost of restructuring on historic operations and earnings.

(d) Adjusting for size and scale.

(e) Adjusting for excessive leverage

(f) Adjusting for relevant factors impacting the cost of capital.

(g) Including the effects of significant changes in strategy or limitations on strategic alternatives.

(h) Evaluating the impacts of the quality of management and the likelihood of new management or a chief restructuring officer on operations.

(i) Adjusting for liquidity constraints.

(j) Evaluating the uniqueness of the situation or similar situations throughout the subject company's industry.

(k) Evaluating the likelihood of achieving an operational turnaround even with financial restructuring.

c. *"The Asset-Based Approach"* is based on the principle of accumulating the value or cost to acquire/replace the net assets employed in a business enterprise. The asset accumulation methods used to value a business enterprise have similarities to the Cost Approach used to value individual assets. The Asset-Based Approach values distinct classes or groups of assets and/or liabilities and accumulates the net asset values as an indication of the company's Fair Market Value. This approach involves separately valuing each item on the balance sheet and adjusting all tangible and intangible assets and liabilities, to the extent such liabilities are appropriate deductions in calculating a net asset value. This approach is most useful for asset intensive business in the real estate and extractive industries or for investment holding companies and is less applicable for service based operating companies which may possess significant intangible value(s). The asset approach is useful in cases of liquidation where the company will not continue to operate as a complete going concern as currently constituted or in insolvency (balance sheet insolvency) assessments. The two major methods within the asset approach are the net asset value method and the residual or excess earnings method.

i. The following information related to the Premise of Value should be considered when using the Adjusted Net Asset Method or Adjusted Book Value Method:

(a) Identification of the assets and appropriate liabilities.
(b) Value of the assets and liabilities (individually or in the aggregate).
(c) Holding, overhead, selling and/or liquidation costs when the liquidation premise or standard is applicable.

ii. When using methods under the Asset-Based Approach or Cost Approach to value individual classes of assets, the Valuation Analyst should consider the type of cost to be used (for example, reproduction cost or replacement cost), and, where applicable, the appropriate forms of depreciation and obsolescence and the remaining useful life of the intangible asset.

iii. For Valuation Engagements involving workouts, restructurings or bankruptcy, the Valuation Analyst should carefully consider the impact of additional factors (both qualitative and quantitative) on each asset and apply appropriate adjustments including:

(a) The impact of wind down or recovery costs when the liquidation premise or standard is applicable.
(b) The value of prepaid expenses.
(c) The impact of unrecorded asset depletion or aging on the estimated recoveries from book values or assets.
(d) The value of off-balance-sheet or other assets.
(e) The impact of off-balance-sheet or other liabilities.

(f) The differences between book value and the estimated amount of liability claims.
(g) The value of intangible assets.
(h) The impact of priority collateral recoveries to each of the creditor classes based on the proceeds available for distribution, i.e. secured claims versus unsecured claims.
(i) The impact of bankruptcy defined priority recoveries to each of the creditor classes based on the proceeds available for distribution, i.e. priority wage and tax claims, priority administrative claims, etc.
(j) The impact of bankruptcy defined recovery rights on available assets, i.e. reclamation claims that diminish actual assets through the return of goods or which create administrative claims or which require cash payment.

Valuation Adjustments

68. During the course of a Valuation Engagement, the Valuation Analyst should consider whether valuation adjustments (discounts or premiums) should be made to a pre-adjustment value. Examples of valuation adjustments for valuation of a business, business ownership interest, or security include a discount for lack of marketability or liquidity and a discount for lack of control. An example of a valuation adjustment for valuation of an intangible asset is obsolescence.

a. When applying valuation adjustments, caution should be taken to select factors that are not already considered in the underlying valuation analysis to avoid double counting. For example, some factors such as the quality of the financial statements, the nature of the company, and the quality of management may have already been accounted for in the risk adjustment used in determining the cost of capital.

b. When applying discounts to a closely held company, the particular facts and circumstances of each valuation should be considered. Caution should be exercised by the Valuation Analyst to avoid overlaps and double discounting. The Valuation Analyst must understand and properly apply the results of the various studies that are being relied upon and have an understanding about the relevance of the underlying data.

c. When applying discounts, whenever possible, alternate scenarios should be reflected in the projected cash flows in order to consider a scenario-weighted result rather than simply increasing the discount rate for all risks.

d. The application of discounts or premiums or other adjustments should be made based on their relevance to the marketplace in which the business operated. Strengths and weaknesses of the various valuation approaches should be reconciled against market evidence that existed at the time of the transaction to determine the nature and extent of any relevant discounts or premiums.

i. Relevant market evidence regarding the debtor may include the contemporaneous views of the executives, actions of contemporaneous creditors, contemporaneous views of business and financial experts, contemporaneous business planning documents, and other assessments of the business at the Valuation Date.

ii. Relevant evidence regarding the debtor's access to financial markets may include the willingness of significant transaction participants to lend funds, its refinancing market activity, the treatment of trade creditors by the debtor, public statements by the debtor affecting the marketplace in which it participates, the impact of credit default swaps on pricing, the presence of sophisticated participants in determining transaction pricing and similar considerations.

iii. Relevant market evidence for the industry may include comparative historical merger and acquisition pricing metrics for similar firms. Comparisons to public market transaction prices may require adjustments to account for differences in size and leverage, financial or operational risk, time period between the marketplace transaction dates versus the Valuation Date, conditions in the public stock markets, and the state of the general economy at the times of the comparable transactions versus the Valuation Date, etc.

e. The Valuation Analyst will need to carefully consider the relevant application of premiums and discounts as they are affected by the intended purpose of the valuation and its context as well as any limitations imposed by case law.

69. When valuing a controlling ownership interest under the Income Approach, the value of any non-operating assets, non-operating liabilities, or excess or deficient operating assets should be treated separately from the computation of the value based on the operating assets and should be added to, or deleted from, the value of the operating entity. When valuing a non-controlling ownership interest under the Income Approach, the value of any non-operating assets, non-operating liabilities, or excess or deficient operating assets may or may not be used to adjust the value of the operating entity depending on the Valuation Analyst's assessment of the influence exercisable by the non-controlling interest. In the Asset Based Approach or Cost Approach, it may not be necessary to separately consider non-operating assets, non-operating liabilities, or excess or deficient operating assets. The appropriate treatment of non-operating assets and non-operating liabilities will also depend on the Premise of Value being applied.

70. For Valuation Engagements involving workouts, restructurings or bankruptcy, the Valuation Analyst should carefully consider the impact of any additional factors that may affect the unique facts and circumstances of the valuation assignment. For example, these adjustments may involve the financial impact of restrictions placed on the sale of assets or securities, measures of execution risk, accounting for the distinctions between reorganization value and enterprise value under a Plan of Reorganization, and other unique factors that will depend on the situation, the purpose of the valuation, the Subject Interest and the intended user.

a. The meaning of reorganization value needs to be carefully considered. For example, some debtors improperly use enterprise value to represent reorganization value. More recently, most plans of reorganization have adopted an expanded concept for reorganization value. The Valuation Analyst will need to carefully determine the concept of this value when preparing a pro forma balance sheet for the disclosure statement.

b. Reorganization values differ from the enterprise values. Enterprise value is the value assigned to the funded debt plus the value of the equity plus certain adjustments. Reorganization value is the value attributed to the reconstituted entity, as well as the expected net realizable value of those assets that will be disposed before reconstitution occurs.

71. Valuations analyses developed in connection with fresh-start accounting, quasi-reorganization accounting, business combination accounting or other related uses of the valuation report to determine accounting journal entries can affect the purpose, intended use, definitions of value, methodologies and approaches, or other work performed by the Valuation Analyst. The Valuation Analyst should carefully consider the impact of distinctions between reorganization value and enterprise value, definitions of fair value, allocations of goodwill and other intangible assets, and other relevant additional accounting factors that may affect the unique facts and circumstances of the valuation assignment.

a. Careful attention needs to be paid to the definitions of value in a Valuation Engagement performed for accounting purposes. For example, the definitions of Reorganization Value and Fair Value used for accounting purposes have specific meanings.

i. "Reorganization Value" is defined in the Glossary of the Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) 852-10-20 to be "The value attributed to the reconstituted entity, as well as the expected net realizable value of those assets that will be disposed before reconstitution occurs. Therefore, this value is viewed as the fair value of the entity before considering liabilities and approximates the amount a willing buyer would pay for the assets of the entity immediately after the restructuring."

ii. "Fair Value" as applied to accounting measurements is defined in ASC 820-10-35-3 as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." The Valuation Analyst should pay careful attention to the relevant definitions and interpretations of terms used in the valuation. For example, entry-price, exit-price, transaction-price and other terms may have specific meanings and interpretations that are applicable to valuations performed in an accounting context under ASC.

b. When a debtor emerges from Chapter 11 bankruptcy, the emerging entity is a new legal entity. Under ASC 852-10-45-17 through 45-19, the reconstituted entity may or may not qualify for fresh-start accounting. Fresh-start accounting represents a reporting change in the historical book basis of the assets and liabilities of the reconstituted entity.

i. Under ASC 852-10-45-19, "If the reorganization value of the assets of the emerging entity immediately before the date of confirmation is less than the total of all postpetition liabilities and allowed claims [the 'solvency test'], and if holders of existing voting shares immediately before confirmation receive less than 50 percent of the voting shares of the emerging entity [the 'control test'], the entity shall adopt fresh-start reporting upon its emergence from Chapter 11..."

ii. The initial recognition, measurement and impairment of goodwill and intangible assets involve many accounting rules and procedures. For example, ASC 350 addresses the subsequent accounting and impairment of goodwill and other intangible assets acquired either individually, with a group of other assets, or in a business combination as defined by ASC 805. The scope of ASC 350 includes the application of excess reorganization value recognized by companies that adopt fresh-start reporting in accordance with ASC 852-10. ASC 805 addresses the allocation of all assets purchased in business combinations including the recognition and measurement of intangible assets. ASC 958 addresses the recognition and measurement of intangible assets acquired by a not-for-profit entity. The methodology used to determine the value of intangible assets assigned to reporting unit(s) for accounting purposes should be reasonable and supportable and should be applied in a consistent manner that complies with the objectives and processes described in relevant accounting requirements.

iii. Under fresh-start accounting, the guidance in ASC 805-20 is applied to assign the reorganization value to the reconstituted entity's assets and liabilities. If any portion of the reorganization value cannot be attributed to specific tangible or identified intangible assets of the emerging entity, such amounts shall be reported as goodwill in accordance with ASC 350-20-25-2. The determination of conclusion(s) of value(s) for assets and liabilities that are used in the performance of a fresh start solvency test and which are used to assign asset and liability values under FASB's ASC should be based on the application of relevant valuation standards and accounting requirements. The methodology used to determine the amount of goodwill to assign to reporting unit(s) for accounting purposes should be reasonable and supportable and should be applied in a consistent manner that complies with the objectives and processes described in ASC 350-20-35-42 and 43 and other relevant accounting requirements.

c. Under certain circumstances, an entity may choose to undergo quasi-reorganization rather than filing for Chapter 11 bankruptcy. Under quasi-reorganization, accounting adjustments are recorded to restate the balance sheet to fair value, but should not result in an increase to net assets. The accounting procedures reclassify accumulated deficits against other surplus equity accounts and re-measure the values of assets and liabilities.

i. Accounting for quasi-reorganizations does not apply to entities emerging from Chapter 11 reorganizations which are governed by ASC 852-10. In quasi-reorganization accounting, assets and liabilities are generally measured at fair value as defined under ASC definitions and guidelines and under SEC regulations. Balance sheet adjustments for quasi-reorganization accounting generally incorporate many of the concepts applied in the accounting for business combinations (refer to ASC 805 Business Combinations). The methodology used to determine the fair values in quasi-reorganization for accounting purposes should be reasonable and supportable and should be applied in a consistent manner and should be based on the application of relevant valuation standards and accounting requirements.

ii. An entity applying quasi-reorganization accounting may have goodwill at the date of the readjustment which could require an impairment charge due to its financial decline and other factors. Any impairment charges should precede quasi-reorganization accounting. If goodwill remains after quasi-reorganization, goodwill should be assigned to the entity's reporting unit(s) in accordance with ASC 350-20-35-42 through 43 and other relevant ASC. The method used to assign goodwill to each reporting unit should be reasonable, supportable and consistently applied and should comply with the objectives of the process of assigning goodwill based on the application of relevant accounting requirements.

Conclusion of Value

72. In arriving at a conclusion of value, the Valuation Analyst should:

a. Correlate and reconcile the results obtained under the different approaches and methods used.

b. Assess the appropriateness of each approach and method, the reliability of the data and the veracity of the computations for each approach and method using the information gathered during the Valuation Engagement.

c. Consider performing sensitivity or scenario analyses to evaluate the impact on valuation computations from key assumptions to reconcile the significance of key factors affecting the different approaches and methods.

d. Determine, based on items a, b, and c whether the valuation conclusion should reflect (1) the results of one valuation approach and method, or (2) a combination of the results of more than one valuation approach and method.

73. The results of several valuation methods must be synthesized into a conclusion of value. The synthesis may be quantitative, qualitative or both. The synthesis of a valuation conclusion does not need to be based solely upon a mathematical weighting of more than one approach or a mathematical formula. Regardless of whether the valuation conclusion consists of a single value, a range of values, or a greater-than or less-than proposition, several considerations should be made including:

a. Adjusting, if required, the various valuation indications to the same level of value, Standard of Value, and Premise of Value.

b. Consider weighing quantitatively and/or qualitatively each indication of value relative to their merits in the particular Valuation Engagement.

c. Consider performing sensitivity or scenario analyses to evaluate the relative weights applied on the indications of valuation before reaching a valuation conclusion.

Documentation

74. Documentation is the principal record of information obtained and analyzed, procedures performed, valuation approaches and methods considered and used, and the conclusion of value. The quantity, type, and content of documentation are matters of the Valuation Analyst's professional judgment and experience considering the nature and purpose of the assignment. Documentation may include:

a. Information gathered and analyzed to obtain an understanding of matters that may affect the value of the Subject Interest.
b. Assumptions and limiting conditions.
c. Any restriction or limitation on the scope of the Valuation Analyst's work or the data available for analysis.
d. Basis for using any valuation assumption during the Valuation Engagement.
e. Valuation approaches and methods considered.
f. Valuation approaches and methods used including the rationale and support for their use.
g. If applicable, information relating to subsequent events considered by the Valuation Analyst.
h. For any rule of thumb used in the valuation, source(s) of data used, and how the rule of thumb was applied or considered plausible in relation to other data.
i. Other documentation considered relevant to the engagement by the Valuation Analyst.

75. The Valuation Analyst should reasonably identify and retain the documentation for a period of time sufficient to meet the reasonably anticipated needs of applicable legal, regulatory, or other professional requirements for records retention.

76. The Valuation Analyst should consider documenting, at a minimum, the following:

a. Identity of the client.
b. Identity of the Subject Interest.
c. Whether or not a business interest has ownership control characteristics and its degree of marketability.
d. Purpose and intended use of the calculated value.
e. Intended users of the report and the limitations on its use.
f. Valuation Date.
g. Applicable Premise of Value.
h. Applicable Standard of Value.
i. Sources of information used in the engagement and any corroborating procedures performed.
j. Valuation approaches or valuation methods and their computations.
k. Conditions and limiting assumptions.

F. __THE VALUATION REPORT__

77. A valuation report is a written or oral communication to the client containing the conclusion of value or the calculated value of the Subject Interest. Reports issued for purposes of certain Controversy Proceedings are exempt from this reporting standard. Reports issued using a specified proprietary valuation methodology or data that is not fully disclosed to the Valuation Analyst for competitive reasons (i.e., valuations regarding highly specialized technology assets) may be exempt from this reporting standard. The proprietary nature of the valuation data and methodology is a matter of professional judgment.

78. The valuation report is structured to provide sufficient information to permit intended users to understand the data, reasoning and analyses underlying the Valuation Analyst's conclusion of value. Valuation Analysts must distinguish between fact and opinion and ensure that the information contained in the report is clear and complete. The report must be objective and unbiased, supported by thorough, diligent and appropriate research and investigation, and must provide a reasonable and adequate basis for the conclusion. The guiding principle should be to provide the user with adequate disclosure of the fundamental factors that define: the engagement, the key assumptions and limiting conditions, the selection and application of valuation approaches and methods, the sources and any issues involved with data compilation and use, the rationale for valuation adjustments, and the basis for reconciling a synthesis of value as the valuation conclusion. If the intended user of a report is already familiar with many of the items identified above from prior reports or from limitations placed on the engagement, the intended user may not require a full recitation of all of the factors underlying the opinion of value. The precise context and selection of appropriate content for the intended use and intended user of the report is a matter of professional judgment.

79. The primary objective of a valuation report is to provide convincing and compelling support for the conclusions reached. Valuation reports should contain all the information necessary to ensure a clear understanding of the valuation analyses and demonstrate how the conclusions were reached. A valuation report may include, as applicable, the following sections titled using wording similar in content to that shown. The listed report sections and the detailed information within the sections described in the following paragraphs of the Standards may be positioned in the body of the report or elsewhere in the report at the discretion of the Valuation Analyst and are provided as examples. The report may include:

    a. Letter of transmittal.

    b. Table of contents.

    c. Introduction—This section should provide an overall description of the Valuation Engagement. The information in the section should be sufficient to enable the intended user of the report to understand the nature and scope of the Valuation Engagement, as well as the work performed. If these items are not included in the introduction, they should be included elsewhere in the valuation report. The introduction section may include, among other things, the following information:

        i. Identity of the client.

        ii. Purpose and intended use of the valuation.

iii. Intended users of the valuation.

iv. Identity of the subject entity.

v. Description of the Subject Interest.

vi. Whether the business interest has ownership control characteristics and its degree of marketability.

vii. Valuation Date.

viii. Report date.

ix. Type of report issued (namely, a detailed report).

x. Applicable Premise of Value.

xi. Applicable Standard of Value.

xii. Assumptions and limiting conditions (often appear in an appendix).

xiii. Any restrictions or limitations in the scope of work or data available for analysis.

xiv. Any hypothetical conditions used in the Valuation Engagement, including the basis for their use.

xv. If the work of a specialist was used in the Valuation Engagement, a description of how the specialist's work was relied upon.

xvi. Disclosure of subsequent events in certain circumstances.

xvii. Any application of the jurisdictional exception.

xviii. Any additional information the Valuation Analyst deems useful to enable the user(s) of the report to understand the work performed.

d. Sources of information—This section of the report should identify the relevant sources of information used in performing the Valuation Engagement. It may include, among other things, the following:

i. For valuation of a business, business ownership interest, or security, whether and to what extent the subject entity's facilities were visited or otherwise corroborated.

ii. For valuation of an intangible asset, whether the legal registration, contractual documentation, or other tangible evidence of the asset was inspected.

iii. Names, positions, and titles of persons interviewed and their relationships to the Subject Interest.

iv. Financial information.

v. Tax information.

vi. Industry data.

vii. Market data, particularly for markets where the asset has little comparable data (such as thinly-traded securities).

viii. Economic data.

ix. Other empirical information.

x. Relevant documents and other sources of information provided by or related to the entity.

(a) If the financial information includes financial statements that were reported in an audit, review, compilation, or attest engagement performed under the AICPA's standards by the Valuation Analyst's firm, the valuation report should disclose this fact and the type of report issued.

(b) If the Valuation Analyst or the Valuation Analyst's firm performed an audit, review, compilation, or attest engagement under the AICPA's standards regarding the financial information, the Valuation Analyst should so state and should also state that the Valuation Analyst assumes no responsibility for the financial information.

(c) The Valuation Analyst should disclose any concerns regarding the analyst's understanding about the reliability of information that is provided by others for adoption within the analyst's conclusion of value; for example, real estate appraisals, estimated environmental remediation costs, and other information supplied by management.

xi. The financial information may be derived from or may include information derived from tax returns.

(a) With regard to such derived information and other tax information, the Valuation Analyst should identify the tax returns used and any existing relationship between the Valuation Analyst and the tax preparer.

(b) If the Valuation Analyst or the Valuation Analyst's firm performed an audit, review, compilation, or attest engagement under the AICPA's standards regarding any financial information derived from tax returns that is used during the Valuation Engagement, the Valuation Analyst should so state and should also state that the Valuation Analyst assumes no responsibility for that derived information.

(c) The Valuation Analyst should disclose any concerns regarding the analyst's understanding about the reliability of tax information that is provided by others for adoption within the analyst's conclusion of value.

xii. If the financial information used was derived from financial statements prepared by management that were not the subject of an audit, review, compilation, or attest engagement performed under the AICPA's standards, the valuation report should:

(a) Identify the financial statements.

(b) State that, as part of the Valuation Engagement, the Valuation Analyst did not audit, review, compile, or attest under AICPA's standards to the financial information and assumes no responsibility for that information.

(c) The Valuation Analyst should disclose any concerns regarding the analyst's understanding about the reliability of financial information that is provided by others for adoption within the analyst's conclusion of value.

e. Analysis of the subject entity and related nonfinancial information—The Valuation Analyst should include a description of the relevant nonfinancial information as listed and discussed in the Standards.

f. Financial statement/information analysis—This section should include a description of the relevant financial information as listed and discussed in the Standards. Such description may include:

i. The rationale underlying any normalization or control adjustments to financial information.

ii. Comparison of current performance and projections with historical performance.

iii. Comparison of performance with industry trends and norms, where available.

iv. Comparison of current and historical performance with those of the comparable companies.

v. Comparison of historical budget and actual or projected and actual performance.

g. Valuation approaches and methods considered—This section should state that the Valuation Analyst has considered the valuation approaches as listed and discussed in the Standards.

h. Valuation approaches and methods used—In this section, the Valuation Analyst should identify the valuation methods used under each valuation approach and the rationale for their use. This section should also identify the following for each of the three approaches (if used):

i. Income Approach:

(a) Composition of the representative benefit stream.

(b) Method(s) used, and a summary of the most relevant risk factors considered in selecting the appropriate discount rate, the capitalization rate, or both.

(c) Other relevant factors as listed and discussed within these Standards.

ii. Asset Based Approach (or Cost Approach):

(a) Asset Based Approach: Any adjustments made by the Valuation Analyst to the relevant balance sheet data.

(b) Cost Approach: The type of cost used, how this cost was estimated, and, if applicable, the forms of and costs associated with depreciation and obsolescence used under the approach and how those costs were estimated.

(c) Other relevant factors as listed and discussed within these Standards.

iii. Market Approach:

(a) For the Guideline Public Company Method:

(i) The selected guideline companies and the process used in their selection.

(ii) The pricing multiples, how they were used, any critical factors affecting the rationale for their selection, if the pricing multiples were adjusted, and any critical factors affecting the rationale for such adjustments.

(b) For the Merger and Acquisition Method, the sales transactions and pricing multiples, how they were used, and the rationale for their selection. If the pricing multiples were adjusted, the rationale for such adjustments.

(c) For the Company Specific Sales Method or Historical Internal Transactions Method, the sales transactions, how they were used, and the rationale for determining that these sales are representative of arms length transactions.

(d) For the Stock and Debt Method or the Observable Market Value Method, the pricing multiples, how they were used, any critical factors affecting the rationale for their selection, if the pricing multiples were adjusted, and any critical factors affecting the rationale for such adjustments.

(e) For each of these methods, mention any relevant transactions that were excluded and the specific terms or characteristics that qualified them for exclusion.

(f) For each of these methods, mention other relevant factors as listed and discussed within these Standards.

i. Valuation adjustments—This section should identify each valuation adjustment considered and determined to be applicable, for example, discount for lack of marketability; describe the rationale for using the adjustment and the factors considered in selecting the amount or percentage used; and, describe the pre-adjustment value to which the adjustment was applied.

j. Non-operating assets, non-operating liabilities, and excess or deficient operating assets (if any)—When the Subject Interest is a business, business ownership interest, or security, the valuation report should identify any related non-operating assets and liabilities, excess or deficient operating assets, contingent assets and liabilities, and their effect on the valuation.

k. Representations of the Valuation Analyst—Each written report should contain the representations of the Valuation Analyst. The representation section of the report summarizes the factors that guided the Valuation Analyst's work during the engagement. Examples of these factors include:

    i. The analyses, opinions, and conclusion of value included in the valuation report are subject to the specified assumptions and limiting conditions, and they are the personal analyses, opinions, and conclusion of value of the Valuation Analyst.

    ii. The economic and industry data included in the valuation report have been obtained from various printed or electronic reference sources that the Valuation Analyst believes to be reliable (any exceptions should be noted). The Valuation Analyst has not performed any corroborating procedures to substantiate that data.

    iii. The Valuation Engagement was performed in accordance with the AIRA's *Standards for Distressed Business Valuation*.

    iv. The parties for which the information and use of the valuation report is restricted are identified; the valuation report is not intended to be and should not be used by anyone other than such parties.

    v. The Valuation Analyst used the work of one or more outside specialists to assist during the Valuation Engagement. (An outside specialist is a specialist other than those employed in the Valuation Analyst's firm.) If the work of such a specialist was used, the specialist should be identified. The valuation report should include a statement identifying the level of responsibility, if any, the Valuation Analyst is assuming for the specialist's work.

    vi. The Valuation Analyst has no obligation to update the report or the opinion of value for information that comes to his or her attention after the date of the report.

    vii. The Valuation Analyst reserves the right to update the report if additional information becomes available.

viii. The Valuation Analyst and the person(s) assuming responsibility for the valuation should sign the representation in their own name(s), or their names should be clearly included in the area that contains their firm's signature. The names or firm(s) of those providing significant professional assistance should be identified.

l. Representations regarding information provided to the Valuation Analyst —It may be appropriate for the Valuation Analyst to obtain written representations regarding information that the subject entity's management provides to the Valuation Analyst for purposes of his or her performing the Valuation Engagement. The decision whether to obtain a representation letter is a matter of judgment for the Valuation Analyst.

m. Reconciliation of estimates and conclusion of value—This section should present a reconciliation of the Valuation Analyst's estimate or various estimates of the value of the Subject Interest. In addition to a discussion of the rationale underlying the conclusion of value, this section should include the following or similar statements:

i. A Valuation Engagement was performed, including the Subject Interest and the Valuation Date.

ii. The analysis was performed solely for the purpose described in this report, and the resulting estimate of value should not be used for any other purpose.

iii. The Valuation Engagement was conducted in accordance with the AIRA's *Standards for Distressed Business Valuation*.

iv. A statement that the estimate of value resulting from a Valuation Engagement is expressed as a conclusion of value.

v. The scope of work or data available for analysis is explained, including any restrictions or limitations and their impact on the interpretation of the conclusion of value.

vi. A statement describing the conclusion of value, either a single amount or a range.

vii. The conclusion of value is subject to the assumptions and limiting conditions and to the Valuation Analyst's representation.

viii. The report is signed in the name of the Valuation Analyst or the Valuation Analyst's firm.

ix. The date of the valuation report is included.

x. The Valuation Analyst has no obligation to update the report or the conclusion of value for information that comes to his or her attention after the date of the report.

xi. The following is an example of report language that could be used, but is not required, when reporting the results of a Valuation Engagement:

We have performed a Valuation Engagement, as that term is defined in the AIRA's Standards for Distressed Business Valuation, of [DEF Company, GHI business ownership interest of DEF Company, GHI security of DEF Company, or GHI intangible asset of DEF Company] as of [Valuation Date]. This valuation was performed solely to assist [name of party] in the matter of [purpose of the valuation]; the resulting estimate of value should not be used for any other purpose or by any other party for any purpose. This Valuation Engagement was conducted in accordance with the Standards for Distressed Business Valuation. The estimate of value that results from a Valuation Engagement is expressed as a conclusion of value.

The specific valuation procedures we employed are detailed in paragraphs [reference to paragraph numbers] of our valuation report. These procedures were performed solely to assist [name of party] in the matter of [purpose of valuation procedures], and the resulting calculation of value should not be used for any other purpose or by any other party for any purpose.

[If applicable] We were restricted or limited in the scope of our work or data available for analysis as follows: [describe restrictions or limitations].

[If applicable] In this engagement, the Valuation Analyst and the client agreed on the specific valuation approaches and valuation methods used and the extent of valuation procedures the Valuation Analyst performed to estimate the value of the Subject Interest. The results of the valuation analysis are limited to this application of the valuation procedures.

Based on our analysis, as described in this valuation report, the estimate of value of [DEF Company, GHI business ownership interest of DEF Company, GHI security of DEF Company, or GHI intangible asset of DEF Company] as of [Valuation Date] was [value, either a single amount or a range]. This conclusion is subject to the Statement of Assumptions and Limiting Conditions found in [reference to applicable section of valuation report] and to the Valuation Analyst's Representation found in [reference to applicable section of valuation report]. We have no obligation to update this report or our conclusion of value for information that comes to our attention after the date of this report.

[Signature and Date]

n. Qualifications of the Valuation Analyst—The report should contain information regarding the qualifications of the Valuation Analyst.

o. Appendices and exhibits—Appendices or exhibits may be used for required information or information that supplements the detailed report. Often, the assumptions and limiting conditions and the Valuation Analyst's representation are provided in appendices to the detailed report.

Oral Report

80. An oral report may be used in a Valuation Engagement. An oral report should include all information the Valuation Analyst believes necessary to relate the scope, assumptions, limitations, and the results of the engagement so as to limit any misunderstandings between the analyst and the recipient of the oral report. The member should document in the working papers the substance of the oral report communicated to the client.

G. <u>EFFECTIVE DATE</u>

81. The AIRA's *Standards for Distressed Business Valuation* applies to engagements that involve estimating and/or developing an opinion of the value of a Subject Interest accepted on or after March 1, 2014.

APPENDICES

APPENDIX A

ASSOCIATION OF INSOLVENCY AND RESTRUCTURING ADVISORS

Code of Professional and Ethical Conduct

(Revised 08/16/10)

AIRA members have a responsibility to perform professional services in a manner consistent with the Code of Professional and Ethical Conduct developed by the Board of Directors pertaining to competence, confidentiality, integrity, objectivity and due care.

COMPETENCE

Members have a responsibility to:

- Maintain an appropriate level of professional competence by ongoing development of their knowledge and skills.

- Perform their professional duties in accordance with relevant laws, regulations and technical standards; including, but not limited to, technical standards issued by authoritative bodies as designated in the bylaws.

- Accept only those assignments for which they possess, or can reasonably acquire, the necessary competence to complete, applying their knowledge and skill with reasonable care and diligence without assuming a responsibility for infallibility of knowledge or judgment.

CONFIDENTIALITY

Members have a responsibility to:

- Refrain from disclosing confidential information acquired in the course of their work, except when authorized, unless legally obligated to do so.

- Inform subordinates as appropriate regarding the confidentiality of information acquired in the course of their work and monitor their activities to assure the maintenance of confidentiality.

- Refrain from using or appearing to use confidential information acquired in the course of their work for unethical or illegal advantage, either personally or through third parties.

INTEGRITY

Members have a responsibility to:

- Be honest and candid within the constraints of client confidentiality.

- Avoid actual or apparent conflicts of interest and advise all appropriate parties of any potential conflicts.

- Not knowingly misrepresent facts.

- Refrain from any activity that would prejudice their ability to carry out their duties ethically.

- Recognize and communicate professional limitations or other constraints that would preclude responsible judgment or successful performance of an activity.

- Refrain from engaging in or supporting any activity that would discredit the profession.

- Observe the principals of objectivity and due care.

OBJECTIVITY

Members have a responsibility to:

- Be impartial, intellectually honest, and free of conflicts of interest.

- Communicate information fairly and objectively.

DUE CARE

Members have a responsibility to:

- Discharge their professional responsibilities with competence and diligence.

- Adequately plan and supervise the performance of professional services.

- Obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

APPENDIX B

Amended and Restated Bylaws

(Revised 10/24/12)

Association of Insolvency and Restructuring Advisors
a Virginia nonstock corporation

ARTICLE I

Name and Purpose

Section 1. Name. The name of the corporation shall be the Association of Insolvency and Restructuring Advisors (the "***Association***").

Section 2. Purpose. The purposes of the Association are generally (1) to unite and support appropriate professionals providing business turnaround, restructuring and bankruptcy services, (2) as necessary, to develop, promote and maintain professional standards of practice through various means, including, without limitation, a certification program, (3) to encourage relations with counterparts in other countries, and (4) to perform those certain specified objectives as set forth in Article VIII of these Bylaws.

ARTICLE II

Members

Section 1. Membership. Membership in the Association shall be open to financial advisors, accountants, crisis managers, business turnaround consultants, lenders, investment bankers, attorneys, trustees and other individuals involved in the fields of business turnaround, restructuring, bankruptcy and insolvency.

Section 2. Admission to Membership. Admission to membership for the then current calendar year may only be obtained by fully completing the application accompanied by the payment of dues for one year. The Association's officers and staff will review the application for completeness and prepare a ballot requesting action by the Board of Directors of the Association (the "***Board***"). The ballot shall then be acted on by the Board and, upon favorable action, the applicant will then become a member entitled to all benefits of members of the Association.

Section 3. Other Professional Licenses. The membership application specified above in Section 2 shall require the disclosure to the Association by the prospective member of each professional license held by such prospective member. Upon admission, each member undertakes and shall have a continuing obligation to immediately notify the Association of any changes with respect to each such professional license, including, without limitation, the addition, abandonment, revocation or suspension of any such professional license.

Section 4. Automatic Suspension of Membership. A member's membership shall be automatically suspended upon the occurrence of any one of the following:

(a) Failure by such member to pay dues to the Association within 30 days after the date when such dues are due and payable;

(b) Suspension of such member's certification (a "***CIRA or CDBV Certificate***") from the Association's Certified Insolvency and Restructuring Advisor or Certification in Distressed Business Valuation programs other than for the purpose of failure to comply with the continuing education requirements; or

(c) Suspension of any professional license held by such member other than for the failure by such member to pay dues or comply with any continuing education requirements.

Any such suspension from membership in the Association shall terminate and the member shall be automatically reinstated upon the full payment of dues due and payable to the Association or the reinstatement of such member's CIRA or CDBV Certificate or professional license, as the case may be.

Section 5. Automatic Termination of Membership. A member's membership will be automatically revoked and terminated upon the occurrence of any one of the following:

(a) Revocation of such member's CIRA or CDBV Certificate;

(b) Revocation of any professional license held by such member; and

(c) The conviction of such member for a felony.

Section 6. Suspension or Termination of Membership by Board Action. The Board, by a unanimous vote of those present (but excluding the member who is to be considered if such member is a director) and voting at a legally constituted meeting, may suspend or expel a member for (1) failure to comply with these Bylaws, (2) failure to comply with the Association's Code of Ethics, or (3) conduct prejudicial to the best interests of the Association. Before a vote on suspension or expulsion by the Board, a member shall be entitled to an opportunity for a hearing at such a meeting of the Board on the reasons for the suspension or expulsion, except that no hearing shall be required if the member fails to attend the meeting. The notice to the Board for any such meeting shall specifically state that the suspension or expulsion of the member will be considered at the meeting.

Section 7. Effect of Suspension. Until reinstated (whether automatically or by a vote of the Board, as the case may be), a suspended member shall not be entitled to any right or benefit of membership in the Association, including, without limitation, the right to have such member's name listed in the Association's directory.

Section 8. Effect of Termination. A terminated and expelled member shall not be entitled to any right or benefit of membership in the Association, including, without limitation, the right to have such member's name listed in the Association's directory.

Section 9. Transfer of Membership. Membership in the Association is not transferable.

Section 10. Enforcement of Bylaws. The Association may take legal action against a member to collect unpaid dues and to enforce these Bylaws.

Section 11. Liability of Members. No member of the Association shall be personally liable for any of its debts, liabilities or obligations, nor shall any member be subject to any assessment other than dues, if any, except as authorized by the Board.

Section 12. Annual Meeting. There shall be an annual meeting of members (the "***Annual Conference***") of the Association. The Annual Conference shall be held during the months of May or June, or at such other time as determined by the Board, and may be held at such place either in or out of the Commonwealth of Virginia as may be provided in a notice of meeting, consistent with these Bylaws.

Section 13. Voting. No member shall have any voting rights or at any time have the right to vote on any matter regarding the business affairs or operations of the Association, and no meeting of the members shall at any time be called or held for such purpose.

Section 14. Notice. A written notice of the Annual Conference of members shall be given to each member at the address as it appears on the membership records of the Association, not less than 10 nor more than 60 days before the date of the meeting, by or at the direction of the President, Secretary or the officer or persons calling the meeting. The notice so given shall state the date, time and place of the Annual Conference. If mailed, notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the member at his address as it appears on the membership records of the Association, with postage thereon prepaid. If a meeting is adjourned to a different date, time and place, notice need not be given of the new date, time or place if the new date, time or place is announced at the meeting before adjournment is taken.

ARTICLE III

Membership Dues and Association Funds

Section 1. Dues. Dues shall be required annually for membership in the Association and shall be determined and assessed at the discretion of the Board.

Section 2. Use of Funds. Funds of the Association shall be used to pay for ordinary operating expenses of the Association, and such other expenses that are deemed by the Board as being for the promotion and betterment of the Association.

Section 3. Collection of Funds. The Treasurer of the Association shall have authority to collect dues required to be paid hereunder. In addition, the Treasurer may delegate to the Executive or Administrative Director the collection of dues, disbursements of funds, maintenance of financial records and books and such other business of the Association as deemed appropriate. An annual report will be prepared by the Treasurer and distributed to the membership within 90 days after the end of the Association's fiscal year. Any other financial reports, as deemed necessary by the Board from time to time, will also be prepared by the Treasurer and distributed to the membership.

ARTICLE IV

Board of Directors

Section 1. Powers. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association shall be managed under the direction of, the Board.

Section 2. Number of Directors. The Association shall be governed by a board of directors composed of at least 15 but not more than 40 directors. Directors must be natural persons who are at least 18 years of age and members of the Association, but need not be residents of the Commonwealth of Virginia. The majority of the directors on the Board must have a CIRA Certificate.

Section 3. Term and Election. Directors shall each serve for a term of three years, or such less term as the Board may determine, or until their successors are duly elected and shall have qualified. Directors may serve an unlimited number of terms, whether or not consecutive. Directors shall be elected by majority vote at a meeting of the Board.

Section 4. Vacancies. Should any vacancy occur on the Board, then such vacancies may be filled by the Board.

Section 5. Removal. The Board shall have the right to remove a director, with or without cause, upon a majority vote at a meeting of the Board called for the specific purpose of removing such director. The meeting notice shall state that the purpose, or one of the purposes, of the meeting is removal of the director.

Section 6. Responsibilities of the Board. The responsibilities of the Board shall include, but not be limited to:

(a) Approving the annual budget for the Association;

(b) Establishing committees, programs and other Association activities;

(c) Reviewing and approving plans and proposals submitted by any committees created by the Board; and

(d) Fixing and approving any material expenditures not otherwise provided for under a previously approved annual budget of the Association.

Section 7. Meetings. There shall be regular meetings of the directors to be held from time to time at such place, either in or out of the Commonwealth of Virginia, as may be provided in a notice of meeting, consistent with these Bylaws. Special meetings of the Board may be called by the President, or if he is absent or unable or refuses to act, then by any two directors.

Section 8. Notice. Notice of regular meetings of the Board may be given but is not required, although it is expected that all directors shall be kept apprised of regular Board meeting dates. Notice of the date, time and place of special meetings shall be given at least 10 days before the meeting date in the manner provided by law, to include by electronic means of communication. A notice of any special meeting shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the notice and matters germane thereto. Attendance at or participation in a meeting waives any notice requirement unless the director, at the beginning of the meeting or promptly upon his arrival, objects to holding such meeting or transacting business at such meeting and does not vote for or give assent to action taken at such meeting.

Section 9. Quorum. The act of a majority of the directors present at a meeting at which a quorum is present, with a quorum consisting of 51% of the then fixed or prescribed number of directors, shall be the act of the Board.

Section 10. Action Without a Meeting. Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if the action is taken with the written consent of all members of the Board (or of the committee of the Board). The action must be evidenced by one or more written consents describing the action to be taken and signed by each director (or committee member), which consent(s) shall be filed in the minutes of the proceedings of the Board. The action taken shall be deemed effective when the last director signs the consent, unless the consent specifies otherwise.

Section 11. Committees. The Board, by resolution, may designate from among its members an executive committee and one or more other committees each of which must have at least two members and, to the extent provided in the designating resolution, shall have and may exercise all the authority of the Board, except such authority as may be reserved to the Board under the Virginia Nonstock Corporation Act. The Board, by resolution adopted in accordance with this Section 11, may designate one or more directors as alternate members of any such committee who may act in the place and stead of any absent member or members at any meeting of such committee.

Section 12. Executive Committee. Upon designation and to the extent specified by the Board, an Executive Committee may exercise the general authority of the Board for day-to-day oversight of the Association's activities, except that the Executive Committee may not (i) amend the Association's Articles of Incorporation, as amended, (ii) adopt, amend or repeal the Bylaws, (iii) approve a plan of merger or a sale of substantially of the Association's assets, or (iv) take any action inconsistent with those matters addressed by these Bylaws.

Section 13. Emeritus Director. The Board may elect to have former members of the Board be granted Emeritus Status as Directors Emeritus. An Emeritus Director may attend Board meetings, but shall not be entitled to vote at such meeting. An Emeritus Director shall not count as a Director for purposes of Section 2 of this Article.

ARTICLE V

Officers

Section 1. General. The officers of the Association shall be a President, Chairman, President-Elect, Vice Presidents, Secretary, Treasurer and such other officers as may be designated from time to time by the Board.

Section 2. Election, Term of Office. Officers shall be elected by the Board. Unless otherwise determined when the officer is elected, each officer shall serve for one year or until his successor has been elected; provided that any officer may be removed from office at any time for any reason, with or without cause, by a majority vote of the Board.

Section 3. President. The President shall (i) be a member of the Board and the Chief Executive Officer of the Association, (ii) arrange, attend and preside at all meetings of the Board or its members, and shall perform the duties usually devolving upon a presiding officer at all such meetings, (iii) exercise general supervision over the property, business and affairs of the Association and shall determine that its governing provisions are observed and enforced, and (iv) do everything necessary to discharge all duties incident and customary to such office, having always in mind the welfare, purposes and standing of the Association. Additionally, the President or, in his absence, the President-Elect, shall exercise such supervision over the Association's affairs as may be required to ensure that the Association is functioning in accordance with these Bylaws, with the policies and resolutions of the Board and in accordance with its stated exempt purposes under Section 501(c)(6) of the Internal Revenue Code of 1986, as amended (the "***Code***").

Section 4. President-Elect. The President-Elect, (A) in the absence, disability or death of the President, shall (i) act in the capacity of the President and (ii) shall have and exercise all the above specified powers of the President, and (B) shall otherwise perform such other duties as may be prescribed by the President or the Board.

Section 5. Chairman. The Chairman will be the most recent past president. The Chairman (i) shall advise and assist the President in the performance of his duties and (ii) shall perform such other duties as may be prescribed by the President or the Board.

Section 6. Vice Presidents. The Vice Presidents shall perform the duties as may be prescribed by the President or the Board.

Section 7. Secretary. The Secretary shall (i) keep the minutes of all meetings of the members and of the Board and be responsible for the records of the Association, (ii) have charge of the seal of the Association, (iii) maintain a roster of members, officers and directors, including their terms and the expiration dates thereof, (iv) prepare and dispatch Board correspondence, and (v) perform such other duties as may pertain to such office and as the President or Board may from time to time prescribe. The Secretary shall deliver to his successor within one month after the expiration of such Secretary's term, including expiration upon such Secretary's removal, resignation or otherwise, all books, records and property of the Association in his possession.

Section 8. Treasurer. The Treasurer shall (i) collect and disburse funds, (ii) deposit funds in the bank account of the Association, (iii) disburse or invest monies as authorized by the Board, (iv) keep records of receipts and disbursements, (v) assist the President in preparing and submitting financial reports and budgets to the Board and the members, and (vi) shall perform such other duties as are incident and customary to the office or as may be prescribed by the President. The Treasurer may use the facilities of a bank to assist in collection and handling of fees and dues, and filing required state and federal annual reports or tax returns. The Treasurer is required, at the regular meeting of the Board immediately following the filing of the Association's annual federal and state income tax returns, to furnish to the Board a copy of such tax returns for the most recent fiscal year, and evidence of timely filing thereof. The Treasurer may enlist, at the Treasurer's sole option and discretion, the assistance and resources of any Board member to assist in carrying out this tax return filing responsibility. The Treasurer shall deliver to his successor within one month after the expiration of such Treasurer's term, including expiration upon such Treasurer's removal, resignation or otherwise, all books, records of the Association and property in his possession and a supplemental report to the Board of all transactions of the Association from the date of such Treasurer's last annual report to the Board to the expiration of such Treasurer's term.

Section 9. Association Property. Upon the expiration of an officer's term or such officer's removal or resignation, such officer other than the Secretary and the Treasurer shall immediately surrender and deliver all property of the Association in his possession to the President or the President-Elect.

Section 10. Vacancy. The vacancy of any office may be filled by a vote of the Board at any time. The person elected to fill the vacancy will then serve for the unexpired portion of the term of office for which his predecessor was elected.

ARTICLE VI
Other Matters

Section 1. Contracts. The Association shall only enter into contracts the subject matter of which is authorized by the Board.

Section 2. Checks. All checks drafts or other orders for the payment of money issued in the name of the Association shall be signed by the President and the Treasurer, or by such other officer or agent of the Association as shall be designated from time to time by resolution of the Board. Checks issued for an amount in excess of $10,000 require two signatures. Approved signatures are President, Treasurer, Executive Director and President Elect.

Section 3. Fiscal Year. The fiscal year of the Association shall end on December 31 of each calendar year, unless otherwise fixed by resolution of the Board.

Section 4. Corporate Records. The Association shall keep correct and complete books and records of accounts and minutes of all Board and members' meetings and a record of all actions taken by the Board without a meeting, and a record of all actions taken by any committee of the Board in place of the Board.

Section 5. Conflict of Interest Policy. The Association's Conflict of Interest Policy is attached as Exhibit A. Each director, principal officer and member of a committee with board delegated powers shall annually sign a statement which affirms that such person –

1. has received a copy of the conflicts of interest policy,
2. has read and understands the policy,
3. has agreed to comply with the policy, and
4. understands that the Association is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

Section 6: Equal Employment. The Association is an equal opportunity employer.

(a) With respect thereto, it is the policy of the Association that all applicants for employment will be considered; that all persons employed, including management staff, professionals, administrative staff and all others, will be treated without regard to race, color, religion, sex, sexual orientation, national origin, age or handicap. Such action includes, but is not limited to, the following: employment, promotion, demotion, transfers, layoff and termination, recruitment and recruitment advertising, rates of pay and other forms of compensation, selection for training, and all Association-sponsored social and recreational programs. It is each and every employee's responsibility to ensure that our employment practices follow these guidelines.

(b) The Association is committed to providing a workplace which is free from sexual harassment as well as unlawful harassment based on ancestry, race, color, age, marital status, veteran status, medical condition, mental disability, physical disability, national origin, religion, sex, sexual orientation or any other protected characteristic. The Association does not tolerate harassment of employees by managers, supervisors or co-workers. The Association will also attempt to protect employees from harassment by non-employees in the workplace.

(c) In keeping with this commitment, the Association maintains a strict policy prohibiting unlawful harassment. This policy applies to all employees, including supervisors and non-supervisory employees. Furthermore, it prohibits harassment in any form including, without limitation, verbal, physical and visual harassment.

ARTICLE VII

Certain Objectives

<u>Section 1</u>. The general purposes of the Association are as stated in Article I of these Bylaws. Following are seven specific objectives of the Association:

(1) To aid members in developing competency in whichever practice area in the fields of business turnaround, restructuring and bankruptcy that they provide service;

(2) To provide training for members entering and continuing in the practice areas of business turnaround, restructuring and bankruptcy;

(3) To develop and maintain standards of competency in the practice areas of business turnaround, restructuring, bankruptcy and insolvency accounting, and valuation of distressed assets and businesses through the Certified Insolvency and Restructuring Advisor (CIRA) and the Certification in Distressed Business Valuation (CDBV) Programs;

(4) To develop and promulgate ethical standards of practice in the practice areas of business turnaround, restructuring and bankruptcy;

(5) To develop and promulgate financial reporting standards in the practice areas of business turnaround, restructuring and bankruptcy;

(6) To define and develop the various roles and responsibilities members can undertake in a bankruptcy case as provided in the Bankruptcy Code; and

(7) To encourage cooperation with other professionals with similar interests in the fields of business turnaround, restructuring and bankruptcy.

<u>Section 2</u>. <u>Certified Insolvency and Restructuring Advisors and Certification in Distressed Business Valuation Programs</u>. The Board shall administer these Programs.

Section 3. Automatic Suspension of CIRA Certificate and Certification in Distressed Business Valuation. The CIRA or CDBV Certificate of a member shall be automatically suspended upon the occurrence of any one of the following:

(a) Membership in the Association lapses or is suspended automatically or by a vote of the Board;

(b) Failure to comply with the continuing education requirements of the CIRA Certificate and the Program; and

(c) Suspension of any professional license held by such member, other than for failure by such member to pay dues when due and payable or comply with any continuing education requirements.

Section 4. Automatic Revocation of CIRA Certificate and Certification in Distressed Business Valuation. The CIRA or CDBV Certificate of a member shall be automatically revoked upon the occurrence of any one of the following:

(a) Revocation of any professional license held by such member; and

(b) The conviction of such member for a felony.

Section 5. Suspension or Revocation of CIRA Certificate and Certification in Distressed Business Valuation by Board Action. The Board, by a unanimous vote of those present (but excluding the member who is to be considered if such member is a director) and voting at a legally constituted meeting, may suspend or revoke the CIRA or CDBV Certificate of a holder for conduct prejudicial to the best interests of the Association. Before a vote on suspension or revocation by the Board, such holder shall be entitled to an opportunity for a hearing at such meeting of the Board on the reasons for the suspension or revocation, except that no hearing shall be required if the holder fails to attend the meeting. The notice to the Board for any such meeting shall specifically state that the suspension or revocation of the CIRA or CDBV Certificate of such holder will be considered at the meeting.

Section 6. Continuing Education Requirement. At a minimum, members holding CIRA Certificate must complete, over a three-year period (with the first three-year period being on January 1 of the first year after the date on the CIRA Certificate), 60 hours of continuing professional education related to any combination of the following subjects in the disciplines of accounting, tax, finance or law: troubled business workouts, insolvency, bankruptcy and/or restructuring.

Section 7. Authoritative Bodies Promulgating Technical Standards. In accordance with the Code of Professional and Ethical Conduct for a CIRA or CDBV Certificate holder, holders must adhere to technical standards issued by the following authoritative bodies:

(a) the Financial Accounting Standards Board;

(b) the U.S. Securities and Exchange Commission; and

(c) the Public Company Accounting Oversight Board.

ARTICLE VIII

General

Section 1. Office and Records. The Association shall maintain its principal office at 221 Stewart Avenue, Suite 207, Medford, Oregon 97501, until the Board otherwise approves a change of address. The records shall be maintained at such address, with the exception of those records considered necessary to carry out the duties of certain officers. Those records or files shall be transferred to any newly elected officers. The records or files may be inspected by any member or his representative at reasonable times, upon 15 days' prior formal notice.

Section 2. Amendments. The Bylaws may be amended, repealed or added to only by a majority vote of the Board provided that any provisions requiring a greater vote may be amended only by such greater vote.

Section 3. Not-for-Profit. The Association is not organized for profit. No part of the funds received by the Association or net earnings of the Association shall inure to the benefit of or be distributable to the Association's directors, officers, members or other private persons, except that the Association shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Article I. The Association shall operate within the provisions of Section 501(c)(6) of the Code. The Association shall not engage in any activities which would constitute a regular business of a kind ordinarily carried on for profit.

Section 4. Corporation. The Association shall operate as a nonstock corporation under the applicable laws of the Commonwealth of Virginia.

Section 5. Term. The term of the Association shall be perpetual.

EXHIBIT A
CONFLICTS OF INTEREST POLICY OF ASSOCIATION OF INSOLVENCY AND RESTRUCTURING ADVISORS

ARTICLE I PURPOSE

The purpose of the conflicts of interest policy is to protect the interest of Association of Insolvency and Restructuring Advisors (the "Association") and each of its affiliates when it is contemplating entering into a transaction or arrangement that might benefit the private interest of a director or officer of the Association. This policy is intended to supplement but not replace any applicable state laws governing conflicts of interest applicable to nonprofit and charitable Associations.

ARTICLE II DEFINITIONS

1. Interested Person

Any director, officer, or member of a committee with board delegated powers who has a direct or indirect financial interest, as defined below, is an interested person. If a person is an interested person with respect to any affiliate of the Association, he or she is an interested person with respect to the Association and all of its affiliates.

2. Financial Interest
A person has a financial interest if the person has, directly or indirectly, through business, investment or family –

a. an ownership or investment interest in any entity with which the Association or any affiliate has a transaction or arrangement, or

b. a compensation arrangement with the Association or an affiliate or with any entity or individual with which the Association or an affiliate has a transaction or arrangement, or

c. a potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Association or an affiliate is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are substantial in nature. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate board or committee decides that a conflict of interest exists.

ARTICLE III PROCEDURES

1. Duty to Disclose
In connection with any actual or possible conflicts of interest, an interested person must disclose the existence of his or her financial interest and must be given the opportunity to disclose all material facts to the directors or members of committees with board delegated powers considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists
After disclosure of the financial interest and all material facts, and after any discussion with the interested person, he/she shall leave the meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest

a. An interested person may make a presentation at the board or committee meeting, but after such presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement that results in the conflict of interest.

b. The chair of the board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.

c. After exercising due diligence, the board or committee shall determine whether the Association or affiliate can obtain a more advantageous transaction or arrangement with reasonable efforts from a person or entity that would not give rise to a conflict of interest.

d. If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the board or committee shall determine by a majority vote of the disinterested members whether the transaction or arrangement is in the Association›s best interest and for its own benefit and whether the transaction is fair and reasonable to the Association and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

4. Violations of the Conflicts of Interest Policy

a. If the board or committee has reasonable cause to believe that a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

b. If, after hearing the response of the member and making such further investigation as may be warranted in the circumstances, the board or committee determines that the member has in fact failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

ARTICLE IV RECORDS OF PROCEEDINGS

The minutes of the board and all committees with board- delegated powers shall contain—

1. the names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the decision as to whether a conflict of interest in fact existed.

2. the names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

ARTICLE V COMPENSATION

1. A director who receives compensation, directly or indirectly, from the Association or affiliate for services is precluded from voting on matters pertaining to his or her compensation.

2. A member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Association or affiliate for services is precluded from voting on matters pertaining to that member›s compensation.

ARTICLE VI ANNUAL STATEMENTS

Each director, principal officer and member of a committee with board delegated powers shall annually sign a statement which affirms that such person—

a. has received a copy of the conflicts of interest policy,

b. has read and understands the policy,

c. has agreed to comply with the policy, and

d. understands that the Association is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

APPENDIX C

International Glossary of Business Valuation Terms (IGBVT)[1]

The International Glossary of Business Valuation Terms (IGBVT) was jointly developed by the American Institute of Certified Public Accountants (AICPA), the American Society of Appraisers (ASA), the Canadian Institute of Chartered Business Valuators, the National Association of Certified Valuation Analysts, and the Institute of Business Appraisers.

To enhance and sustain the quality of business valuations for the benefit of the profession and its clientele, the below identified societies and organizations have adopted the definitions for the terms included in this glossary.

The performance of business valuation services requires a high degree of skill and imposes upon the valuation professional a duty to communicate the valuation process and conclusion in a manner that is clear and not misleading. This duty is advanced through the use of terms whose meanings are clearly established and consistently applied throughout the profession.

If, in the opinion of the business valuation professional, one or more of these terms needs to be used in a manner which materially departs from the enclosed definitions, it is recommended that the term be defined as used within that valuation engagement.

This glossary has been developed to provide guidance to business valuation practitioners by further memorializing the body of knowledge that constitutes the competent and careful determination of value and, more particularly, the communication of how that value was determined.

Departure from this glossary is not intended to provide a basis for civil liability and should not be presumed to create evidence that any duty has been breached.

American Institute of Certified Public Accountants
American Society of Appraisers
Canadian Institute of Chartered Business Valuators
National Association of Certified Valuation Analysts
The Institute of Business Appraisers

Adjusted Book Value Method—a method within the asset approach whereby all assets and liabilities (including off-balance sheet, intangible, and contingent) are adjusted to their fair market values. {NOTE: In Canada on a going concern basis}

Adjusted Net Asset Method—see **Adjusted Book Value Method**.

Appraisal—see **Valuation**.

Appraisal Approach—see **Valuation Approach**.

Appraisal Date—see **Valuation Date**.

Appraisal Method—see **Valuation Method**.

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[1] Courtesy of the AICPA. Available on the AICPA's website at http://www.aicpa.org/InterestAreas/ForensicAndValuation/ Membership/DownloadableDocuments/Intl%20Glossary%20of%20BV%20Terms.pdf.

Appraisal Procedure—see **Valuation Procedure**.

Arbitrage Pricing Theory—a multivariate model for estimating the cost of equity capital, which incorporates several systematic risk factors.

Asset (Asset-Based) Approach—a general way of determining a value indication of a business, business ownership interest, or security using one or more methods based on the value of the assets net of liabilities.

Beta—a measure of systematic risk of a stock; the tendency of a stock's price to correlate with changes in a specific index.

Blockage Discount—an amount or percentage deducted from the current market price of a publicly traded stock to reflect the decrease in the per share value of a block of stock that is of a size that could not be sold in a reasonable period of time given normal trading volume.

Book Value—see **Net Book Value**.

Business—see **Business Enterprise**.

Business Enterprise—a commercial, industrial, service, or investment entity (or a combination thereof) pursuing an economic activity.

Business Risk—the degree of uncertainty of realizing expected future returns of the business resulting from factors other than financial leverage. See **Financial Risk**.

Business Valuation—the act or process of determining the value of a business enterprise or ownership interest therein.

Capital Asset Pricing Model (CAPM)—a model in which the cost of capital for any stock or portfolio of stocks equals a risk-free rate plus a risk premium that is proportionate to the systematic risk of the stock or portfolio.

Capitalization—a conversion of a single period of economic benefits into value.

Capitalization Factor—any multiple or divisor used to convert anticipated economic benefits of a single period into value.

Capitalization of Earnings Method—a method within the income approach whereby economic benefits for a representative single period are converted to value through division by a capitalization rate.

Capitalization Rate—any divisor (usually expressed as a percentage) used to convert anticipated economic benefits of a single period into value.

Capital Structure—the composition of the invested capital of a business enterprise; the mix of debt and equity financing.

Cash Flow—cash that is generated over a period of time by an asset, group of assets, or business enterprise. It may be used in a general sense to encompass various levels of specifically defined cash flows. When the term is used, it should be supplemented by a qualifier (for example, "discretionary" or "operating") and a specific definition in the given valuation context.

Common Size Statements—financial statements in which each line is expressed as a percentage of the total. On the balance sheet, each line item is shown as a percentage of total assets, and on the income statement, each item is expressed as a percentage of sales.

Control—the power to direct the management and policies of a business enterprise.

Control Premium—an amount or a percentage by which the pro rata value of a controlling interest exceeds the pro rata value of a non controlling interest in a business enterprise to reflect the power of control.

Cost Approach—a general way of determining a value indication of an individual asset by quantifying the amount of money required to replace the future service capability of that asset.

Cost of Capital—the expected rate of return that the market requires in order to attract funds to a particular investment.

Debt-Free—we discourage the use of this term. See **Invested Capital**.

Discount for Lack of Control—an amount or percentage deducted from the pro rata share of value of 100% of an equity interest in a business to reflect the absence of some or all of the powers of control.

Discount for Lack of Marketability—an amount or percentage deducted from the value of an ownership interest to reflect the relative absence of marketability.

Discount for Lack of Voting Rights—an amount or percentage deducted from the per share value of a minority interest voting share to reflect the absence of voting rights.

Discount Rate—a rate of return used to convert a future monetary sum into present value.

Discounted Cash Flow Method—a method within the income approach whereby the present value of future expected net cash flows is calculated using a discount rate.

Discounted Future Earnings Method—a method within the income approach whereby the present value of future expected economic benefits is calculated using a discount rate.

Economic Benefits—inflows such as revenues, net income, net cash flows, etc.

Economic Life—the period of time over which property may generate economic benefits.

Effective Date—see **Valuation Date**.

Enterprise—see **Business Enterprise**.

Equity—the owner's interest in property after deduction of all liabilities.

Equity Net Cash Flows—those cash flows available to pay out to equity holders (in the form of dividends) after funding operations of the business enterprise, making necessary capital investments, and increasing or decreasing debt financing.

Equity Risk Premium—a rate of return added to a risk-free rate to reflect the additional risk of equity instruments over risk free instruments (a component of the cost of equity capital or equity discount rate).

Excess Earnings—that amount of anticipated economic benefits that exceeds an appropriate rate of return on the value of a selected asset base (often net tangible assets) used to generate those anticipated economic benefits.

Excess Earnings Method—a specific way of determining a value indication of a business, business ownership interest, or security determined as the sum of a) the value of the assets derived by capitalizing excess earnings and b) the value of the selected asset base. Also frequently used to value intangible assets. See Excess Earnings.

Fair Market Value—the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts. {NOTE: In Canada, the term "price" should be replaced with the term "highest price".}

Fairness Opinion—an opinion as to whether or not the consideration in a transaction is fair from a financial point of view.

Financial Risk—the degree of uncertainty of realizing expected future returns of the business resulting from financial leverage. See Business Risk.

Forced Liquidation Value—liquidation value, at which the asset or assets are sold as quickly as possible, such as at an auction.

Free Cash Flow—we discourage the use of this term. See **Net Cash Flow**.

Going Concern—an ongoing operating business enterprise.

Going Concern Value—the value of a business enterprise that is expected to continue to operate into the future. The intangible elements of Going Concern Value result from factors such as having a trained work force, an operational plant, and the necessary licenses, systems, and procedures in place.

Goodwill—that intangible asset arising as a result of name, reputation, customer loyalty, location, products, and similar factors not separately identified.

Goodwill Value—the value attributable to goodwill.

Guideline Public Company Method—a method within the market approach whereby market multiples are derived from market prices of stocks of companies that are engaged in the same or similar lines of business and that are actively traded on a free and open market.

Income (Income-Based) Approach—a general way of determining a value indication of a business, business ownership interest, security, or intangible asset using one or more methods that convert anticipated economic benefits into a present single amount.

Intangible Assets—nonphysical assets such as franchises, trademarks, patents, copyrights, goodwill, equities, mineral rights, securities, and contracts (as distinguished from physical assets) that grant rights and privileges and have value for the owner.

Internal Rate of Return—a discount rate at which the present value of the future cash flows of the investment equals the cost of the investment.

Intrinsic Value—the value that an investor considers, on the basis of an evaluation or available facts, to be the "true" or "real" value that will become the market value when other investors reach the same conclusion. When the term applies to options, it is the difference between the exercise price and strike price of an option and the market value of the underlying security.

Invested Capital—the sum of equity and debt in a business enterprise. Debt is typically (a) all interest-bearing debt or (b) long-term, interest-bearing debt. When the term is used, it should be supplemented by a specific definition in the given valuation context.

Invested Capital Net Cash Flows—those cash flows available to pay out to equity holders (in the form of dividends) and debt investors (in the form of principal and interest) after funding operations of the business enterprise and making necessary capital investments.

Investment Risk—the degree of uncertainty as to the realization of expected returns.

Investment Value—the value to a particular investor based on individual investment requirements and expectations. {NOTE: in Canada, the term used is "**Value to the Owner**".}

Key Person Discount—an amount or percentage deducted from the value of an ownership interest to reflect the reduction in value resulting from the actual or potential loss of a key person in a business enterprise.

Levered Beta—the beta reflecting a capital structure that includes debt.

Limited Appraisal—the act or process of determining the value of a business, business ownership interest, security, or intangible asset with limitations in analyses, procedures, or scope.

Liquidity—the ability to quickly convert property to cash or pay a liability.

Liquidation Value—the net amount that would be realized if the business is terminated and the assets are sold piecemeal. Liquidation can be either "orderly" or "forced."

Majority Control—the degree of control provided by a majority position.

Majority Interest—an ownership interest greater than 50% of the voting interest in a business enterprise.

Market (Market-Based) Approach—a general way of determining a value indication of a business, business ownership interest, security, or intangible asset by using one or more methods that compare the subject to similar businesses, business ownership interests, securities, or intangible assets that have been sold.

Market Capitalization of Equity—the share price of a publicly traded stock multiplied by the number of shares outstanding.

Market Capitalization of Invested Capital—the market capitalization of equity plus the market value of the debt component of invested capital.

Market Multiple—the market value of a company's stock or invested capital divided by a company measure (such as economic benefits, number of customers).

Marketability—the ability to quickly convert property to cash at minimal cost.

Marketability Discount—see **Discount for Lack of Marketability.**

Merger and Acquisition Method—a method within the market approach whereby pricing multiples are derived from transactions of significant interests in companies engaged in the same or similar lines of business.

Mid-Year Discounting—a convention used in the Discounted Future Earnings Method that reflects economic benefits being generated at midyear, approximating the effect of economic benefits being generated evenly throughout the year.

Minority Discount—a discount for lack of control applicable to a minority interest.

Minority Interest—an ownership interest less than 50% of the voting interest in a business enterprise.

Multiple—the inverse of the capitalization rate.

Net Book Value—with respect to a business enterprise, the difference between total assets (net of accumulated depreciation, depletion, and amortization) and total liabilities as they appear on the balance sheet (synonymous with Shareholder's Equity). With respect to a specific asset, the capitalized cost less accumulated amortization or depreciation as it appears on the books of account of the business enterprise.

Net Cash Flows—when the term is used, it should be supplemented by a qualifier. See **Equity Net Cash Flows** and **Invested Capital Net Cash Flows**.

Net Present Value—the value, as of a specified date, of future cash inflows less all cash outflows (including the cost of investment) calculated using an appropriate discount rate.

Net Tangible Asset Value—the value of the business enterprise's tangible assets (excluding excess assets and non-operating assets) minus the value of its liabilities.

Non-operating Assets—assets not necessary to ongoing operations of the business enterprise. {NOTE: in Canada, the term used is "**Redundant Assets**".}

Normalized Earnings—economic benefits adjusted for nonrecurring, noneconomic, or other unusual items to eliminate anomalies and/or facilitate comparisons.

Normalized Financial Statements—financial statements adjusted for non-operating assets and liabilities and/or for nonrecurring, noneconomic, or other unusual items to eliminate anomalies and/or facilitate comparisons.

Orderly Liquidation Value—liquidation value at which the asset or assets are sold over a reasonable period of time to maximize proceeds received.

Premise of Value—an assumption regarding the most likely set of transactional circumstances that may be applicable to the subject valuation; for example, going concern, liquidation.

Present Value—the value, as of a specified date, of future economic benefits and/or proceeds from sale, calculated using an appropriate discount rate.

Portfolio Discount—an amount or percentage deducted from the value of a business enterprise to reflect the fact that it owns dissimilar operations or assets that do not fit well together.

Price/Earnings Multiple—the price of a share of stock divided by its earnings per share.

Rate of Return—an amount of income (loss) and/or change in value realized or anticipated on an investment, expressed as a percentage of that investment.

Redundant Assets—see **Non-operating Assets**.

Report Date—the date conclusions are transmitted to the client.

Replacement Cost New—the current cost of a similar new property having the nearest equivalent utility to the property being valued.

Reproduction Cost New—the current cost of an identical new property.

Required Rate of Return—the minimum rate of return acceptable by investors before they will commit money to an investment at a given level of risk.

Residual Value—the value as of the end of the discrete projection period in a discounted future earnings model.

Return on Equity—the amount, expressed as a percentage, earned on a company's common equity for a given period.

Return on Investment—See **Return on Invested Capital** and **Return on Equity**.

Return on Invested Capital—the amount, expressed as a percentage, earned on a company's total capital for a given period.

Risk-Free Rate—the rate of return available in the market on an investment free of default risk.

Risk Premium—a rate of return added to a risk-free rate to reflect risk.

Rule of Thumb—a mathematical formula developed from the relationship between price and certain variables based on experience, observation, hearsay, or a combination of these; usually industry specific.

Special Interest Purchasers—acquirers who believe they can enjoy post-acquisition economies of scale, synergies, or strategic advantages by combining the acquired business interest with their own.

Standard of Value—the identification of the type of value being utilized in a specific engagement; for example, fair market value, fair value, investment value.

Sustaining Capital Reinvestment—the periodic capital outlay required to maintain operations at existing levels, net of the tax shield available from such outlays.

Systematic Risk—the risk that is common to all risky securities and cannot be eliminated through diversification. The measure of systematic risk in stocks is the beta coefficient.

Tangible Assets—physical assets (such as cash, accounts receivable, inventory, property, plant and equipment, etc.).

Terminal Value—See **Residual Value**.

Transaction Method—See **Merger and Acquisition Method**.

Unlevered Beta—the beta reflecting a capital structure without debt.

Unsystematic Risk—the risk specific to an individual security that can be avoided through diversification.

Valuation—the act or process of determining the value of a business, business ownership interest, security, or intangible asset.

Valuation Approach—a general way of determining a value indication of a business, business ownership interest, security, or intangible asset using one or more valuation methods.

Valuation Date—the specific point in time as of which the valuator's opinion of value applies (also referred to as "**Effective Date**" or "**Appraisal Date**").

Valuation Method—within approaches, a specific way to determine value.

Valuation Procedure—the act, manner, and technique of performing the steps of an appraisal method.

Valuation Ratio—a fraction in which a value or price serves as the numerator and financial, operating, or physical data serve as the denominator.

Value to the Owner—see Investment Value.

Voting Control—de jure control of a business enterprise.

Weighted Average Cost of Capital (WACC)—the cost of capital (discount rate) determined by the weighted average, at market value, of the cost of all financing sources in the business enterprise's capital structure.

APPENDIX D

Illustrative List of Assumptions and Limiting Conditions for a Distressed Business Valuation

The valuation report should include a list of assumptions and limiting conditions under which the engagement was performed. This appendix includes an illustrative list of assumptions and limiting conditions that may apply to a business valuation. Use of these or other assumptions and limiting conditions by the Valuation Analyst is a matter of professional judgment.

Illustrative List of Assumptions and Limiting Conditions

1. The conclusion of value arrived at herein is valid only for the stated purpose as of the date of the valuation.

2. Financial statements and other related information provided by [ABC Company] or its representatives, in the course of this engagement, have been accepted without any verification as fully and correctly reflecting the enterprise's business conditions and operating results for the respective periods, except as specifically noted herein. [Valuation Firm] has not audited, reviewed, or compiled the financial information provided to us and, accordingly, we express no audit opinion or any other form of assurance on this information.

3. Public information and industry and statistical information have been obtained from sources we believe to be reliable, which are disclosed in our report. However, we make no representation as to the accuracy or completeness of such information and have performed no procedures to corroborate the information.

4. We have generally assessed the reasonableness of key information used in arriving at the valuation results, such as projected financial information; however, we do not provide assurance on the achievability of the results forecasted by [ABC Company] because events and circumstances frequently do not occur as expected; differences between actual and expected results may be material; and achievement of the forecasted results is dependent on actions, plans, and assumptions of management.

5. The conclusion of value arrived at herein is based on the assumption that the current level of management expertise and effectiveness would continue to be maintained, and that the character and integrity of the enterprise through any sale, reorganization, exchange, or diminution of the owners' participation would not be materially or significantly changed.

6. This report and the conclusion of value arrived at herein are for the exclusive use of our client for the sole and specific purposes as noted herein. They may not be used for any other purpose or by any other party for any purpose. Furthermore the report and conclusion of value are not intended by the author and should not be construed by the reader to be investment advice in any manner whatsoever. The conclusion of value represents the considered opinion of [Valuation Firm], based on information furnished to them by [ABC Company] and other sources.

7. Neither all nor any part of the contents of this report (especially the conclusion of value, the identity of any valuation specialist(s), or the firm with which such valuation specialists are connected or any reference to any of their professional designations) should be disseminated to the public through advertising media, public relations, news media, sales media, mail, direct transmittal, or any other means of communication without the prior written consent and approval of [Valuation Firm].

8. Future services regarding the subject matter of this report, including, but not limited to testimony or attendance in court, shall not be required of [Valuation Firm] unless previous arrangements have been made in writing.

9. [Valuation Firm] is not an environmental consultant or auditor, and it takes no responsibility for any actual or potential environmental liabilities. Any person entitled to rely on this report, wishing to know whether such liabilities exist, or the scope and their effect on the value of the property or business interest, is encouraged to obtain a professional environmental assessment. [Valuation Firm] does not conduct or provide environmental assessments and has not performed one for the subject property.

10. [Valuation Firm] has not determined independently whether [ABC Company] is subject to any present or future liability relating to environmental matters (including, but not limited to CERCLA/Superfund liability) nor the scope of any such liabilities. [Valuation Firm]'s valuation takes no such liabilities into account, except as they have been reported to [Valuation Firm] by [ABC Company] or by an environmental consultant working for [ABC Company], and then only to the extent that the liability was reported to us in an actual or estimated dollar amount. Such matters, if any, are noted in the report. To the extent such information has been reported to us, [Valuation Firm] has relied on it without verification and offers no warranty or representation as to its accuracy or completeness.

11. [Valuation Firm] has not made a specific compliance survey or analysis of the subject property to determine whether it is subject to, or in compliance with, the American Disabilities Act of 1990, and this valuation does not consider the effect, if any, of noncompliance.

12. [Sample wording for use if the jurisdictional exception is invoked.] The conclusion of value (or the calculated value) in this report deviates from the Standards for Distressed Business Valuation as a result of published governmental, judicial, or accounting authority.

13. No change of any item in this appraisal report shall be made by anyone other than [Valuation Firm], and we shall have no responsibility for any such unauthorized change.

14. Unless otherwise stated, no effort has been made to determine the possible effect, if any, on the subject business due to future Federal, state, or local legislation, including any environmental or ecological matters or interpretations thereof.

15. If prospective financial information approved by management has been used in our work, we have not examined or compiled the prospective financial information and therefore, do not express an audit opinion or any other form of assurance on the prospective financial information or the related assumptions. Events and circumstances frequently do not occur as expected and there will usually be differences between prospective financial information and actual results, and those differences may be material.

16. We have (not) conducted interviews with the current management of [ABC Company] concerning the past, present, and prospective operating results of the company.

17. Except as noted, we have relied on the representations of the owners, management, and other third parties concerning the value and useful condition of all equipment, real estate, investments used in the business, and any other assets or liabilities, except as specifically stated to the contrary in this report. We have not attempted to confirm whether or not all assets of the business are free and clear of liens and encumbrances or that the entity has good title to all assets.

18. For purposes of this report, I have, of necessity, accepted as accurate the accounting records produced in this matter, except as stated herein. My findings and conclusions stated herein are subject to revision upon further investigation and document discovery. Had I or my staff performed additional procedures, other matters might have come to our attention that would have been reported.

19. This report is based on the books and records of [ABC Company] as produced by [ABC Company or Counsel] including financial records, certain correspondence, interviews with management and testimony as identified in [Attached Exhibit]. This report and my opinions may be amended based on any additional information that comes to my attention and additional work that is later requested and performed. I reserve the right to amend this report upon further investigation.

20. My opinions are based on the facts and circumstances in this case and my experience in similar matters. Please note minor differences in reported amounts as shown in this report and all supporting exhibits are the result of rounding.

21. No investigation has been made of, and no responsibility is assumed for, the legal description or for legal matters, including title or encumbrances. Title to the property is assumed to be good and marketable, unless otherwise stated. The property is further assumed to be free and clear of any or all liens, easements, or encumbrances, unless otherwise stated.

22. Information furnished by others, upon which all or portions of this report are based, is believed to be reliable, but has not been verified in all cases. No warranty is given as to the accuracy of such information.

23. No responsibility is taken for changes in market conditions and no obligation is assumed to revise this report to reflect events or conditions, which occur subsequent to the date hereof.

24. Full compliance with all applicable Federal, state, local zoning, use, environmental and similar laws and regulations is assumed, unless otherwise stated.

25. This report has been prepared only for the purpose stated and shall not be used for any other purpose. Neither this report nor any portions thereof (including without limitation any conclusions as to value, the identity of [VALUATION FIRM], or individuals signing or associated with this report, or the professional associations or organizations with which they are affiliated) shall be disseminated to third parties by any means without the prior written consent and approval of [VALUATION FIRM].

26. Neither [VALUATION FIRM] nor any individuals signing or associated with this report shall be required by reason of this report to give testimony or appear in court or other legal proceedings, unless specific arrangements therefore have been made.

27. It is assumed that all required licenses, certificates of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization have been or can be obtained or renewed for any use on which the value estimate contained in this report is based.

28. The value conclusion is predicated on the financial structure prevailing as of the date of this report, unless otherwise noted.

29. For each of the purposes of this report, fair market value is defined as the price at which property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. Court decisions frequently state, in addition, that the hypothetical buyer and seller are assumed to be able, as well as willing, to trade and are well informed about the ownership interest and the market for such ownership interests. The absence of any assumptions or the presence of fraud or undisclosed material facts may affect the conclusions of this report.

30. This valuation report is based on the unique facts and circumstances of [ABC Company] analyzed under the limiting conditions specified herein for the purposes stated herein and it includes assumptions about [ABC Company] that are unique to this situation as a turnaround, workout or bankruptcy matter. Modification of any of these factors may have a material affect the conclusions of this report.

31. The financial information presented herein includes normalization adjustments made solely to assist in the development of the value conclusions presented in this report. Normalization adjustments are hypothetical in nature and are not intended to present restated historical results or forecasts of the future. This information should not be used for any other purpose other than to assist in this valuation, and we express no opinion of any other assurances on this presentation.

32. The contents of this valuation are an opinion of value for the purposes as stated. In no way should this be construed as a recommendation to buy or sell the underlying asset, business or security or as a recommendation to accept a plan of reorganization (in the context of a best interest of creditors test). Furthermore, this valuation is not intended to establish a formula for the value of the security. We support only the opinion stated in this report and assume no responsibility for the use of formulas or other approaches based on these conclusions.

APPENDIX E

Adoption of Standards for Distressed Business Valuation

The Standards for Distressed Business Valuation was adopted by the assenting votes of the Association of Insolvency and Restructuring Advisors Board of Directors and became effective on March 1, 2014.

The AIRA gratefully acknowledges the contributions of the Drafting Committee, Independent Review Committee and the Board of Directors for their work on the Standards for Distressed Business Valuation.

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