

1948

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Recommended Citation

Valuation of Dissenting Minorities' Shares Under Section 21 of the New York Stock Corporation Law, 17 Fordham L. Rev. 259 (1948).

Available at: <https://ir.lawnet.fordham.edu/flr/vol17/iss2/5>

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VALUATION OF DISSENTING MINORITIES' SHARES UNDER SECTION 21 OF THE NEW YORK STOCK CORPORATION LAW

Because of the conflict which occasionally arises between the majority and minority interests in a corporate enterprise, Section 21 of the New York Stock Corporation Law was enacted to safeguard to the minority the value of its investment where, under other sections of the Stock Corporation Law, the majority or requisite percentage of stockholders vote to carry out some fundamental change in corporate policy, organization, or property holdings.¹

Section 21 provides that where the majority (or required percentage) of shareholders has taken action pursuant to certain sections of the Stock Corporation Law,² if any shareholder has objected to such action and has demanded purchase of his stock by the corporation as provided by the statute, either the corporation or the shareholder may apply, upon eight days notice to the other, within 60 days after the demand, to a special term of the supreme court for the appointment of three persons to appraise the value of his stock.³

1. "The purpose of section 21 of the Stock Corporation Law was to protect dissenting shareholders, and the process of appraisal was designed to meet two evils which arose because of limitations upon the powers of majority shareholders to bind the minority to a course of action beyond the powers of the majority, which might well be greatly to the advantage of those engaged in a corporate enterprise. These two evils are well stated in *Matter of Timmis* (200 N. Y. 177 at p. 181), dealing with an analogous Statute:

2. "(1) The injustice to the bulk of the stockholders from want of power in a corporation to sell its business or an essential part thereof to another corporation organized for the purpose, frequently from its own membership, on terms deemed advantageous by the holders of a large majority of the stock. (2) The injustice to minority stockholders of requiring them to abandon, change or limit their business if the majority should have the power to direct such a sale. An incidental evil was the power of a dissenting stockholder to compel the majority to buy him out on his own terms in order to secure unanimous consent with no one left to question the transaction.'" *Anderson v. International Minerals and Chemical Corp.*, 295 N. Y. 343, 349, 67 N. E. 2d 573, 576 (1946). It is worthy of note that under § 21 the alleged bad faith of the dissenting stockholder is immaterial. His right to a § 21 appraisal is absolute. *Matter of Marcus*, 297 N. Y. 38, 74 N. E. 2d 228 (1947).

2. § 14. Where a majority of shares entitled to vote authorizes the issue of stock to employees.

§ 20. Where two-thirds of shares entitled to vote consent to a sale of property, rights, privileges and franchises.

§ 36. Where the required proportion of shares entitled to vote authorizes changes in respect to shares, capital stock, or capital.

§ 85. Where a certificate of merger of corporations is filed with the secretary of state.

§ 86. Where a consolidation of domestic corporations has been voted by two-thirds of the shares entitled to vote.

§ 91. Where a consolidation of a domestic corporation with a foreign corporation has been voted by two-thirds of the shares entitled to vote.

3. "Upon such application the court has some measure of discretion. (*Matter of Bickerton v. New York Theatre Co.*, 232 N. Y. 1; *Matter of Leventall*, 241 App. Div. 277.) If the sale is abandoned during the pendency of the proceeding, the application may be denied. (*Matter of Millard Nos. 1-3*, 221 App. Div. 113; *aff'd*, 246 N. Y. 546)." *In re Thomas*, 259

Any two of the appraisers can estimate and certify to the court the value which such stock had just prior to the taking of the action to which objection is made.⁴ Either the shareholder or the corporation may apply to the supreme court for an order confirming, or modifying, or rejecting the appraisal.⁵ If the appraisal is confirmed or modified, the manner in which payment shall be made to the shareholder will be directed by the court.⁶

App. Div. 736, 18 N. Y. S. 2d 314, 315 (2d Dep't 1940); *In re Eaton*, 189 Misc. 303, 69 N. Y. S. 2d 846 (Sup. Ct. 1947).

4. ". . . the statutes of Ohio and of a few other states expressly provide that the shares shall be valued without reference to any increase or decrease in value due to the corporate action [dissented from]; and even in the absence of such a statute this position has now been taken by the New York Court of Appeals." 2 BONBRIGHT, VALUATION OF PROPERTY 830 (1937) (N. Y. reference is to *Matter of Fulton*, 257 N. Y. 487, 178 N. E. 766 (1931)).

5. The appraisers may make valuation based only on legal evidence which is to be returned with the report, so as to permit correction of errors by the court. *In re Bickerton*, 232 N. Y. 1, 133 N. E. 41 (1921). The court may correct the report and confirm it as modified. *In re Erlanger*, 237 N. Y. 159, 142 N. E. 571 (1923); *Application of Behrens*, 61 N. Y. S. 2d 179 (Sup. Ct. 1946), *aff'd without opinion sub nom. In re Standard Coated Products Corp.*, 271 App. Div. 1007, 69 N. Y. S. 2d 910 (1st Dep't 1947).

6. Interest on the award runs "from the date of taking the action to which objection was made." *Skipworth v. Federal Water & Gas Corp.*, 185 Misc. 248, 56 N. Y. S. 2d 804 (Sup. Ct. 1945). The Stock Corporation Law makes no provisions for costs to parties except for fees and expenses of appraisers which are chargeable to the corporation. *Application of Cheney*, 257 App. Div. 401, 13 N. Y. S. 2d 403 (4th Dep't 1939). *Contra: Chaffee v. Rahr*, 40 N. Y. S. 2d 484 (Sup. Ct. 1943). The court (at 487) sets out the requisites which must be present before costs to a party to the action under § 21 may be allowed.

Section 21 does not revoke the rights of a dissatisfied minority, except insofar as certain corporate acts, which were not permissible under the common law so long as any shareholder objected, are now permissible under the sections of the Stock Corporation Law set out in note 2 *supra*. These sections presuppose good faith on the part of the majority. Wherever fraud is involved the minority stockholder still has the right to enjoin the corporate act. In seeking relief under such circumstances he is not compelled to elect between his statutory and equitable right: ". . . the argument is persuasive that the stockholder should be permitted to take advantage of the appraisal section rather than be forced to pursue his common law remedy." Lattin, *Remedies under Appraisal Statutes*, 45 HARV. L. REV. 233, 246 (1931) (citing *Matter of Drosnes*, 187 App. Div. 425, 175 N. Y. Supp. 628 (1st Dep't 1919)). The prayer for relief, either common law or statutory, may be in the alternative. *Lazenby v. International Cotton Mills Corp.*, 174 App. Div. 906, 180 N. Y. Supp. 1 (1st Dep't 1916). In *Matter of MacDonald*, 205 App. Div. 579, 199 N. Y. Supp. 873 (2d Dep't 1923) the court indicated that Section 20 of the Stock Corporation Law applies to the sale of assets by an insolvent corporation and *People v. Ballard*, 134 N. Y. 269, 32 N. E. 54 (1892) was cited as authority. However, it appears that the question of what action may be taken by the majority of the stockholders of an insolvent corporation was not originally raised in that case. When it was raised, however, on reargument (136 N. Y. 639, 32 N. E. 611 (1892)), the court left the question open, as a new trial had been ordered; but it did intimate that the distinction between the position of the stockholders of a solvent corporation and the position of the stockholders of an insolvent corporation was worthy of notice and should be considered. After the minority shareholder has gone through a § 21 proceeding and accepted the appraised value and surrendered his stock he is no longer able to seek damages from corporate officials for mismanagement during the period that

The principal problem in connection with a Section 21 proceeding is the method of valuation to be used by the appraisers.⁷ There are three decisions in New York which apparently sanction the use of three different methods of appraisal. In *Matter of Fulton*⁸ a sole dissenting stockholder, who held 481 shares of the preferred stock of a corporation whose stockholders had voted to sell all the corporate assets to another corporation, brought suit under Section 21 for the valuation, and purchase by the corporation, of his stock. The capital structure of the corporation was as follows:

2471 shares of 6% pfd. \$100.00 par outstanding	\$247,100.00
2471 shares of common \$100.000 par outstanding	247,100.00
Surplus	682,757.95
	<hr/>
Total Capital and Surplus	\$1,176,957.95

The appraisers fixed the value of a share of the preferred stock at \$238.15 by allotting to the preferred its par value and an aliquot part of the surplus:

Par value	\$100.00
1/4942 of \$682,757.95	138.15
	<hr/>
Value fixed by appraisers	\$238.15

Apparently no evidence had been adduced as to quotations for this stock in the market (the opinion states that there was no established market for the stock). Nor were any quotations for stock of a similar nature brought to the attention of the appraisers. Objection was made by the corporation to the division of the surplus as though the corporation were being liquidated. This objection the court sustained and modified the appraisal so as to allow the dissenting shareholder only the par value of his stock, because the surplus was available in its entirety for payment of dividends on the common stock. This valuation, nevertheless, was based on net asset value.⁹ The modification by

he held stock in the corporation. *Tanenbaum v. Consolidated Edison Co.*, 72 N. Y. S. 2d 493 (Sup. Ct. 1947); *Amella v. Consolidated Edison Co.*, 73 N. Y. S. 2d 263 (Sup. Ct. 1947), *aff'd mem.* (both cases), 273 App. Div. 755, 75 N. Y. S. 2d 513 (1st Dep't 1947).

7. The authorities on the question of valuation in this connection are collated in *BALANTINE, CORPORATIONS* § 299 (rev. ed. 1946) and 13 *FLETCHER, CORPORATIONS* § 5899 (rev. vol. 1943). See also Note, 174 A. L. R. 960 (1948). "It is to be borne in mind that value is the thing to be found, and that neither cost of reproduction new, nor that less depreciation, is the measure or sole guide. The ascertainment of value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis on a proper consideration of all relevant facts." *Standard Oil Co. of New Jersey v. Southern Pac. Co.*, 268 U. S. 146, 156 (1925). See also the discussion of value in *McAnarney v. Newark Fire Ins. Co.*, 247 N. Y. 176, 159 N. E. 902 (1928). The courts have been consistently insistent that before a value can be determined all relevant factors must be considered.

8. 257 N. Y. 487, 178 N. E. 766 (1931).

9. The net worth section of a balance sheet which is comprised of capital and surplus represents the interest of the stockholders in the assets of the corporation after the claims of non-stockholders are satisfied; hence the term *net* asset value.

the Court of Appeals affected only the way in which the net asset value once determined was to be distributed as between the common and the preferred stock.

Another approach to the question of valuation was taken in *Application of Behrens*.¹⁰ Here the court stated that "the appraisal should take account of market value, investment value, and net asset value." The appraisers had based their report on a net asset valuation in which the book value of the assets was used. Evidence had been adduced that the stock which carried a preference as to dividends of \$1.00 annually had been sold for prices ranging from a low of \$4.00 a share in January, 1943 to a high of \$13.50 a share in June, 1943, in the over-the-counter market. The volume of sales was unknown. The earnings per share of preferred stock were as follows:

1941	\$2.28
1942	\$.33
1943	\$.36
1944 (7 months)	\$1.35

Probable future earnings were estimated at from \$1.35 to \$1.75 per share of preferred stock. On the basis of these figures the court held that a valuation of \$28.45 by the appraisers was too high, since the preferred stocks of established companies similar to that of the defendant were selling on a yield basis of approximately 5% and the preferred stock being valued could expect only a dividend of one dollar. The report was modified so as to value the preferred stock at \$20.00 per share. This modification gave controlling weight to investment value.¹¹

*Application of Marcus*¹² involved the valuation by appraisers under Section 21 of stock of R. H. Macy and Co., which stock had been listed and traded in on the New York Stock Exchange since April, 1922. The defendant corporation alleged that under the circumstances the appraisers could consider nothing but market value. It sought to vacate a subpoena duces tecum ordering the defendant to produce its financial records for the use of the appraisers, and to eliminate from the court's order a provision for the appointment of an accountant to make an audit. The contention that the presence of a market value ruled out the submission of any other evidence as to value was rejected by the supreme court; and on the theory that the dissenting stockholder was attempting to adduce evidence before the appraisers of net asset value, the court found for the applicant. The court cited the *Fulton* case as authority. The question before the court was not the amount of the award but rather concerned the procedure to be followed by the appraisers in arriving at a value. No award had yet been determined. However, an inkling of just how strong a factor in the calculation of appraisers the court considered market value to be is reflected

10. 61 N. Y. S. 2d 179, 182 (Sup. Ct. 1946), *aff'd mem.*, 271 App. Div. 1007, 69 N. Y. S. 2d 910 (1st Dep't 1947).

11. See note 24 and discussion under "Investment Value" *infra*.

12. 191 Misc. 808, 77 N. Y. S. 2d 529 (Sup. Ct. 1948), *modified on appeal*, 79 N. Y. S. 2d 76 (1st Dep't 1948).

in its statement: "Even if market value in the case of a fair, open, and broad market, unaffected by exceptional influences is ordinarily the exclusive criterion to be considered by appraisers, it does not necessarily follow that petition's subpoena duces tecum should be vacated."¹³ When the case came up on appeal, the Appellate Division reaffirmed the lower court's statement as to market value, and modified the order below by vacating the subpoena, and eliminating the provision for the appointment of an accountant to make an audit. Apparently market value will be controlling in such a case. A question therefore arises as to the relative merits of market value, investment value, and net asset value in a Section 21 proceeding.

Market Value

Normally in a situation similar to that of the *Marcus* case where the quotation for the stock on a national stock exchange does not change considerably after the corporate adjustment dissented from has taken place, the dissenting stockholder does not seek a valuation of his stock under Section 21. If he believes that the adjustment will make the stock no longer a desirable investment he sells the stock on the exchange. Implicit in this sale is an acknowledgement that the quotation in effect before the change was voted represents the value of his stock. Thus in any proceeding to value shares this market quotation for the stock prior to the action dissented from constitutes an objective criterion of the value of such stock which is readily ascertainable. In the cases where the only market quotations available were from small over-the-counter volume, little consideration was given them because these limited transactions lacked the essential elements of a free market.¹⁴ On the other hand, quotations from organized stock exchanges are given great weight and may control in situations where the market in that security is well developed.¹⁵

There are certain objections to market value. "The market does not wait until the corporate action has taken place before it discounts the event. Often the transaction will be anticipated months, occasionally years, in advance."¹⁶

13. 191 Misc. 808, 814, 77 N. Y. S. 2d 529, 534 (Sup. Ct. 1948).

14. Application of Behrens, 61 N. Y. S. 2d 179 (Sup. Ct. 1946).

15. "There is good authority to the effect that market value, where it fairly reflects the opinion of informed buyers and sellers, is the best evidence of value for all purposes [except where] market prices may be a reflection of unusual conditions or 'moeds,' artificial enhancement or depression, or the market may be too thin to be taken as representative of informed opinion or intrinsic value." Jones v. Healy, 184 Misc. 923, 936, 55 N. Y. S. 2d 349, 359 (Sup. Ct. 1945), *aff'd without opinion*, 270 App. Div. 895, 62 N. Y. S. 2d 605 (1st Dep't 1946), *leave to appeal denied*, 296 N. Y. 1053, 69 N. E. 2d 564 (1946). This was not a case under § 21 but concerned the valuation of shares under a provision similar to § 21 which had been inserted into the articles of association of a joint stock company. In Application of Behrens, 61 N. Y. S. 2d 179 (Sup. Ct. 1946) the court said (at 183); "Thus a wide market on an established exchange under normal conditions is entitled to great and probably controlling weight."

16. BONBRIGHT, VALUATION OF PROPERTY 828 (1937). Some of the objections set out by the author such as pegged market quotations, etc. have been removed by federal legislation in the securities field.

Thus the value of the stock, which is supposed to be taken as of the time just prior to the taking of the corporate action objected to will actually reflect the objected action. There is the possibility that a block of large stock would not sell at the figures quoted for small lots.¹⁷ There is always the possibility that the actions of the management elected by the majority, or control group other than a majority, have brought about a market condition not in keeping with the "true market value".¹⁸ Such a market condition could be brought about by a deliberately parsimonious dividend policy or by striking the stock from the list of an organized stock exchange so as to force the agreement by the minority to some corporate action.¹⁹

Net Asset Value

Net asset value is essentially a balance sheet approach to the problem of valuing stock. The various assets are appraised. From the total of the asset values is subtracted all claims and interests in or against the corporation which must be satisfied before the stock being appraised. The difference resulting is divided by the number of shares outstanding. Where there is preferred stock outstanding its share of the difference is limited to those preferences and rights it has under the charter. Where a surplus exists, the preferred stock shares in the surplus only to the extent that it would share in dividends. The proration of surplus is not made as though the corporation were being liquidated.²⁰

The assets, likewise, are to be appraised from the view of a going concern and not from the view of a corporation in liquidation.²¹ Good will must be considered.²² The statement has been made that the net asset method of valuation

17. Weiner, *Payment of Dissenting Stockholders*, 27 COL. L. REV. 547, 561 (1927) (citing *Matter of Gould*, 19 App. Div. 352, 360, 46 N. Y. Supp. 506, 512 (1st Dep't 1897)).

18. "The appraiser should consider the elements that tend to affect market quotations: the rate of dividends; the regularity with which they have been paid; the management and reputation of the company; its prospects for the future and all other circumstances which will aid them in estimating the future course of the stock in the market." *Matter of Fulton*, 257 N. Y. 487, 493, 178 N. E. 766, 768 (1931).

19. See Note 15 *supra*.

20. This question of proration is the precise point decided in *Matter of Fulton*, 257 N. Y. 487, 178 N. E. 766 (1931).

21. *Matter of Fulton*, 257 N. Y. 487, 178 N. E. 766 (1931). "The intrinsic value of the property of a corporation is, therefore, a component of two elements, its reproduction value less depreciation as a going concern, modified by a consideration of its earning power, and its relatively permanent prospects. The consideration of these two groups of factors will give us the value of the property as a going concern and, from that, the proportional interest of the stockholders can be determined." From the report of the appraisers in *Matter of Ames*, an unreported case, *aff'd without opinion*, *Ames v. Godchaux Sugars*, 229 App. Div. 858, 243 N. Y. Supp. 798 (1st Dep't 1930), *aff'd without opinion*, 256 N. Y. 676, 177 N. E. 189 (1931) (quoted in Robinson, *Dissenting Shareholders*, 32 COL. L. REV. 60, 72 (1932)). In this case an appraisal of the stock at \$95.00 plus \$10.00 of accrued dividends was upheld even though the stock had not sold above \$80.00.

22. In setting a value on good will under the net asset value method the following procedure is used: Average annual earnings are determined. From this sum an interest charge

lends itself to situations where the corporation is in a financially precarious situation.²³ Where the assets are extensive, however, this method of appraisal can be costly, especially where the asset values on the books of the corporation are unreliable as is usually the case.²⁴

Investment Value

While the net asset valuation is essentially a balance sheet approach, the investment value method of appraisal has its point of departure in the financial operating statement or the statement of profit and loss. It is primarily concerned with earnings.²⁵ If the corporation cannot operate at a profit it is considered as being of little if any value.²⁶ On the other hand, whenever the earn-

on the capital and surplus is deducted. This resultant sum is the "excess earnings," *i.e.*, the amount made per year because of good will. This sum is capitalized on a percentage in keeping with the risk involved in the business. In *Von Au v. Magenheimer*, 126 App. Div. 257, 270, 110 N. Y. Supp. 629, 638 (2d Dep't 1908) where the average annual profits for the three preceding years were \$27,181.97 the jury deducted 6% as an interest charge on capital and surplus and capitalized the balance at approximately 16% (six times the net earnings so computed). "It was a question of fact in view of the surrounding circumstances how many years purchase of the average annual profits should be taken as the value of the goodwill." In the *Matter of Seaich*, 170 App. Div. 686, 156 N. Y. Supp. 579 (1st Dep't 1915) the same procedure was followed. Here a three years purchase of average annual earnings was made. In these cases it may be noted that the interest charge on capital and surplus deducted from the earnings may not have been identical with the return expected from "risk capital" in the lines of business in which the corporations were engaged. The interest charge may have been merely the legal rate of interest or the rate then current for loans. Thus the courts would have ignored the fact that the stockholders' investment does not have the security of a pure loan or bondholders' investment.

23. "It is noteworthy that examination of nine typical cases in which the 'total net asset' method of computation was used reveals that in six of them the corporations were in a financially precarious position." Note, *Judicial Valuation in Corporate Mergers and Consolidations*, 47 HARV. L. REV. 847, 849 (1934). No New York case was cited among the nine. Good will and insolvency are usually incompatible.

24. *Berg v. International Silver Co.*, 11 F. 2d 147, 152 (C. C. A. 2d 1925).

25. "The rate at which the securities market capitalizes the earnings of a company is indicated by the 'Price/earnings' ratio, which is calculated as 'Average market price per share of common stock/earned per share of common stock.' A stock which has earned at the rate of \$4 a share for the year and has sold at an average price of \$80 a share during the year has sold at an average price of twenty times earnings. This indicates that the market has capitalized the earnings at the rate of 5%. . . . The rate at which the market capitalizes the earnings of a company depends upon three factors: (a) the risk involved in the security, (b) the outlook for future earnings, and (c) the trend of interest rates." *PREMISE, INVESTMENT ANALYSIS* 381, 382 (1946).

26. "It is a commonplace among investment experts that the stocks of corporations frequently sell at materially lower prices than are justified by actual liquidation values of the assets." 2 *BONBRIGHT, VALUATION OF PROPERTY* 832 (1937) "Of the two [replacement cost new, less depreciation and obsolescence for imperfect design and arrangement, and earning power] the second one, that is the one that concerns earning power, is by far the more important, because no one will buy property for industrial purposes at a price in excess of a reasonable capitalization of its earning power. The learned solicitors for the complainants

ings are above the usual return on capital in that particular industry or field, the value of the corporation is considered as being in excess of the total of the values of the individual assets owned by the corporation. As noted before, in the *Behrens* case the court relied completely on the investment value method, since the court (1) pointed out that preferred stocks similar to that under valuation were selling on a yield basis of 5%; that is, a stock paying a \$1.00 yearly dividend was selling for \$20.00; (2) was of the opinion, from an analysis of the record, that the preferred stockholders could expect a \$1.00 dividend annually; and (3) set the value of the preferred stock at \$20.00. This amounted to a capitalization of the \$1.00 dividend at 5%.

Using this same method of computation, where one wishes to capitalize earnings rather than dividends, if a concern earns \$10,000.00 per year on the average and the expected rate of earnings, considering the risk in that field is 10%, the investment value of the stock would be \$100,000.00. Theoretically this is an example of what transpires in the securities markets of the country. An investor is primarily concerned both with the rate of return he may expect on his investment and with the risk he is taking when he places his money in a particular enterprise. Since the dividend paid or the earnings realized by the company represent the return on the investment, the price the investors generally are willing to pay for a particular stock represents the investors' capitalization of that return at a rate they consider appropriate to the risk they believe they are taking. The Securities and Exchange Commission has adopted this method of determining value in those cases in which it submits a report on plans of reorganization, as it is required to do by Section 172 of the Bankruptcy Act.²⁷

Conclusion

Despite the variety of elements which enter into the consideration of value and the seemingly disparate forms in which these elements can combine, it is believed that there is a principle of unity which underlies the decisions discussed above. In each instance the court is seeking to produce a valuation which would result on a free and informed stock exchange through the unrestricted play of the financial forces constantly in movement on the exchange.²⁸ If there is any force at work in the market for the particular stock being evaluated, which fairly does not belong there and which is not effective generally on the exchange, such as deliberate activity on the part of corporate management to

are, therefore, correct in their statement that in considering value in a sale, earning power will control replacement costs." *Allied Chemical & Dye Corp. v. Steel & Tube Co.*, 14 Del. Ch. 64, 73 (1923). (Quoted by Lattin, *Remedies of Dissenting Stockholders Under Appraisal Statutes*, 45 HARV. L. REV. 233, 262 (1931)).

27. Note, *Valuation by the S. E. C. in Reorganizations*, 55 HARV. L. REV. 125, 127 (1941). ". . . prospective earnings are capitalized at a rate commensurate with the risks inherent in the enterprise." The record of past earnings is the best indication of earnings reasonably to be anticipated.

28. This valuation was suggested in 2 BONBRIGHT, VALUATION OF PROPERTY 834 (1937). There the author called it hypothetical market value of a continuing investment.

depress the value of the stock, allowance will be made for such unfair element. Nevertheless, the dominant theme in the valuation is market.

Turning then to the specific three cases at hand and seeking to determine what place the criteria of the market had in their outcome, what do we find? In the *Marcus* case there existed a price quotation from what is considered a "normal market." If the evidence adduced by the stockholder did not show market abnormality either in the market itself or in the actions of the control group, then the New York Stock Exchange quotation should have been the value, since the market in the stock being appraised had all the characteristics of the "hypothetical market." The *Behrens* case represents the application of market factors on a less certain level. Here there was no reliable market like the New York Stock Exchange where a lively trading in the particular stock obtained, but again the real market still furnished the criterion. The rate of capitalization of dividends by traders in other stocks, substantially similar in the field of operations and risk involved and in all other respects as nearly identical with the stock under valuation as possible, was seized upon as a means of projecting that stock into the market place and finding for it in that market place some position consistent with the general market condition. In *Matter of Fulton* an instance is represented where it is most difficult to relate the particular stock considered to the actual market. No market analogues could be found for the stock to be valued. The evidence concerned itself with the history and financial position of the particular company itself, supplemented only with some information regarding the industry or field generally. Apparently no capitalization of earnings or dividends was possible. Therefore the net asset method of valuation was followed and it was attempted to construct from the data available, from a going concern viewpoint of corporate assets, what the stock might have sold for in a normal market.

It is submitted that a uniform rule has been followed in these cases and that broadly the rule may be stated as follows: the value of the stock to be appraised is what the stock will sell for in a normal market.²⁹ It is further submitted that the rule is well adapted to the realities of investment finance and that "true market value" or "normal market value" represents the most equitable approach to value as the word is used in Section 21 of the New York Stock Corporation Law.

29. "The market may not always appear to be in line with earnings, dividends, or asset value, but in the market all the factors which enter into a realistic determination of value are appraised by those who are most realistic, the actual buyers and sellers, and the market prices, reflecting the composite judgments of the informed and interested, are apt to be more significant than any individual opinion." *Jones v. Healy*, 184 Misc. 923, 936, 55 N. Y. S. 2d 349, 360 (Sup. Ct. 1945), *aff'd without opinion*, 270 App. Div. 895, 62 N. Y. S. 2d 605 (1st Dep't 1946), *leave to appeal denied*, 296 N. Y. 1058, 69 N. E. 2d 564 (1946).