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Corporations -- *Singer v. Magnavox Co.*: An Expansion of Fiduciary Duty in Freezeout Mergers Under the Delaware Long-Form Merger Statute

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Corporations—*Singer v. Magnavox Co.*: An Expansion of Fiduciary Duty in Freezeout Mergers Under the Delaware Long-Form Merger Statute

Under the law of some states a corporation holding a majority equity interest in another company may merge the two corporations and provide in the merger agreement that certain shareholders be paid cash, rather than securities in the resulting entity, for their interest in the old corporation.[1] In these mergers, denominated "freezeouts,"[2] the fiduciary duties governing the relationship between majority and minority stockholders are rooted in state law.[3] In *Singer v. Magnavox Co.*,[4] a recent decision concerning shareholder fiduciary duties, the Delaware

97. Morrissey v. Procter & Gamble, 379 F.2d 675, 679 (1st Cir. 1967).

1. *See, e.g.*, DEL. CODE tit. 8, § 251 (1974 & Cum. Supp. 1977); N.Y. BUS. CORP. LAW §§ 901, 902 (McKinney 1963 & Supp. 1977).

2. Freezeouts can occur in various contexts. For example, merger freezeouts include the situation in which the controlling shareholders of a public corporation who wish to "go private" form a second company and capitalize it with their equity interest in the public corporation. This new "parent" then merges with its public subsidiary with the terms of the merger providing for the elimination of the equity interest of the minority, often on a cash-out basis. A second type of freezeout occurs when one corporation, by tender offer or otherwise, attempts to acquire the majority interest in a business with which it was previously unaffiliated. After the requisite proportional interest is obtained, the acquiring corporation merges the acquired company with itself or its wholly-owned subsidiary, the terms of the merger providing for the elimination of the minority shareholders of the target corporation. *See* Greene, *Corporate Freeze-Out Mergers: A Proposed Analysis*, 28 STAN. L. REV. 487, 491-96 (1976).

3. See Santa Fe Indus., Inc. v. Green, 430 U.S. 462 (1977), in which the Supreme Court held that in short-form mergers the fiduciary relationship between stockholders is a matter of state concern. Specifically, *Santa Fe* rejected the contention that § 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j (1976), and rule 10b-5, 17 C.F.R. § 240.10b-5 (1977), require a proper business purpose to exist before a short-form merger comporting with state law will be valid under federal law. The Court suggested that the reasoning behind its holding is also applicable to long-form mergers. 430 U.S. at 478.

4. 380 A.2d 969 (Del. 1977).

Supreme Court held that it is a breach of fiduciary duty under state law for a controlling shareholder to cause such a merger through utilization of Delaware's long-form merger statute[5] when the sole purpose of the merger is to cash out minority stockholders.[6]

The controversy in *Singer* began in 1974 when North American Philips Corporation (North American) incorporated a wholly-owned subsidiary, North American Philips Development Corporation (Development), for the purpose of making a tender offer for the outstanding common shares of Magnavox. After overcoming the initial resistance of the Magnavox directors,[7] the offer succeeded with Development obtaining approximately 84.1% of outstanding Magnavox common stock. Development next incorporated a subsidiary, T.M.C. Development Corporation (T.M.C.), and proposed to effect a merger between T.M.C. and Magnavox under the long-form merger provision of the Delaware Code. The Magnavox board unanimously approved the proposed merger agreement,[8] which provided that the remaining public stockholders of Magnavox would be "cashed-out."[9]

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5. DEL. CODE tit. 8, § 251 (1974 & Supp. 1977). This section is the primary merger provision of the Delaware Code. It provides that two or more Delaware corporations may merge into a single corporation or consolidate into a new entity. The provision requires that the board of directors of each corporation approve an agreement that stipulates the merger terms and that this agreement subsequently be approved by shareholders holding a majority of outstanding shares entitled to vote on the matter. To be included in the merger agreement are provisions regarding the manner in which shares of the constituent corporation will be converted or eliminated.

Section 251(b)(4) provides that the merger agreement will state:

> [T]he manner of converting the shares of each of the constituent corporations into shares or other securities of the corporation surviving or resulting from the merger or consolidation and, if any shares . . . are not to be converted . . . the cash, property, rights or securities of any other corporation which the holders of such shares are to receive . . . .

Id. § 251(b)(4) (Cum. Supp. 1977).

The long-form statute is currently more permissive than as originally written with respect to the types of consideration that can be paid for a stockholder's interest in a premerger corporation. For a brief history of the development of Delaware's long-form statute, see Balotti, *The Elimination of the Minority Interests by Mergers Pursuant to Section 251 of the General Corporation Law of Delaware*, 1 DEL. J. CORP. L. 63 (1976).

6. 380 A.2d at 980. The supreme court also interpreted the Delaware Securities Act, DEL. CODE tit. 6, § 7303 (1974), to be a state Blue Sky law applicable only to transactions subject to Delaware jurisdiction. It held that out-of-state transactions are not covered by the Act even if the company involved were incorporated in Delaware. 380 A.2d at 981-82.

7. The opposition was suspended after agreement had been reached to increase the original per-share offer and to contract with 16 Magnavox officers for two-year employment contracts. *See* 380 A.2d at 971.

8. *Id.* at 972. At this time Development effectively controlled the Magnavox board: four of the nine directors were also directors of North American and three others had employment contracts.

9. The cash-out price was $9.00 per share and book value was estimated at $10.16 per share. This discrepancy was one ground on which the merger was attacked. *See id.* at 972. Cash freezeouts are discussed in note 2 *supra.*

After the required stockholders' vote, plaintiffs, minority shareholders in Magnavox, filed suit seeking nullification of the consolidation as well as compensatory damages. They alleged that the merger was fraudulent because it did not serve any business purpose other than the forced exclusion of public stockholders from an equity position in Magnavox, that the price offered was inadequate and therefore constituted a breach of duty by Development, the majority shareholder, and that the merger violated the antifraud provision of the Delaware Securities Act.[10] The lower court determined that plaintiffs had failed to state a claim upon which relief could be granted.[11] The supreme court reversed, holding that a majority shareholder owes a fiduciary duty to a minority and that it is a breach of that duty when a long-form merger is effected for the sole purpose of eliminating a noncontrol interest.[12] Rather, before a minority may be eliminated in a long-form merger, a proper business purpose for the combination must exist.[13]

This holding is significant because of its emphasis on and redefinition of the fiduciary duty of controlling shareholders. Delaware's long-form merger statute does not explicitly require, and the state's courts generally have not implied, the necessity of a proper business purpose as a precondition of the validity of any merger.[14] The requirement

10. 380 A.2d at 972.

11. *See* 367 A.2d 1349, 1358, 1362 (Del. Ch. 1976).

12. 380 A.2d at 980. The fiduciary duty was predicated, the court found, on the majority's responsibility toward plaintiffs' investment interest in Magnavox. Significantly, the court held that this interest extended not merely to the value of the investment but also to its form. Therefore, it found that offering a minority merely a fair price for its shares in a cash-out merger would not satisfy the fiduciary obligation, and that defendant's duty was not lessened by the availability to the minority of the right to elect an appraisal. For a discussion of statutory appraisal rights, see notes 19 & 20 and accompanying text *infra.*

13. *See* 380 A.2d at 978-79. The court did not find it necessary to determine which corporation's business interest should be served in the merger. But in Tanzer v. International Gen. Indus., Inc., 379 A.2d 1121 (Del. 1977), a case decided after *Singer* and involving a cash-out long-form merger, the Delaware Supreme Court held that one looked to the business rationale of the parent corporation. The court, however, objected to phrasing the standard in terms of business purpose since it is the parent corporation's status as a stockholder that gives it the right to vote its own interest. *Id.* at 1123. Although this distinction is useful for a conceptual understanding of the *Tanzer* decision, its practical importance in determining the legality of mergers seems problematical because some bona fide business purpose is a prerequisite to merger validity. *See id.* at 1124.

14. The *Singer* court cited two unreported Delaware cases that according to the court suggest that a business justification is required in long-form merger cases. 380 A.2d at 975 n.5 (discussing Tanzer v. International Gen. Indus., Inc., No. 4945 (Del. Ch. Dec. 23, 1975); Pennsylvania Mut. Fund, Inc. v. Todhunter Int'l, Inc., No. 4845 (Del. Ch. Aug. 5, 1975)).

One federal court also has discussed business purpose in the context of a long-form merger. In Grimes v. Donaldson, Lufkin, & Jenrette, Inc., 392 F. Supp. 1393 (N.D. Fla. 1974), *aff'd*, 521 F.2d 812 (5th Cir. 1975), plaintiff sought to prevent a merger between two Delaware corporations on various grounds, including an allegation that the merger served no business function. Apply-that there be a business purpose other than the elimination of a minority interest in long-form mergers runs counter to the general trend of Delaware statutory and case law which has, in general, encouraged consolidations by placing progressively fewer restraints on majority shareholders desiring to effect corporate mergers.[15]

The existence of merger provisions in the Delaware Code has been considered by courts to be evidence of a state policy in favor of facilitating mergers.[16] Because the merger statutes are considered part of every corporate charter, stockholders purchase shares with notice of the provisions, a fact courts have cited in dismissing merger challenges.[17] This interpretation of the policy of the statutes has meant that fewer limitations have been placed on controlling shareholders when making merger decisions than have been placed on them when making other decisions regarding corporate assets or functions.[18]

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ing Delaware law, the court entered judgment for defendants, finding that there was a valid business purpose for the merger but also stressing that a minority did not possess an absolute right to its shares; therefore, it could be cashed out for a fair price. *Id.* at 1403.

While the *Grimes* court purported to apply Delaware law, it never made a specific finding that the state law required a business purpose. Rather, the court apparently considered the business purpose of the merger to be relevant on the basis of Bryan v. Brock & Blevins Co., 490 F.2d 563 (5th Cir.), *cert. denied*, 419 U.S. 844 (1974), a case in which the Court of Appeals for the Fifth Circuit construed a Georgia statute similiar to Delaware's long-form provision. The *Bryan* court concluded that under Georgia law a control group could not force a merger for the sole purpose of eliminating a minority shareholder. Unlike *Singer* and *Grimes*, *Bryan* did not involve the attempt of one corporation to take over another; rather, it involved the attempt of several shareholders of a close corporation to freeze out another shareholder. For an analysis of the *Grimes* court's application of the *Bryan* business purpose test, see Comment, *Corporate Freeze-Outs Effected by Merger: The Search for a Rule*, 37 U. PITT. L. REV. 115, 121-24 (1975).

On the other hand, some cases and commentators have asserted that business purpose is not a consideration under Delaware's merger law. *See* MacCrone v. American Capital Corp., 51 F. Supp. 462, 466 (D. Del. 1943); Bruce v. E.L. Bruce Co., 40 Del. Ch. 80, 174 A.2d 29, 30 (1961); Arsht, *Minority Stockholder Freezeouts Under Delaware Law*, 32 BUS. LAW. 1495, 1497 (1977); Balotti, *supra* note 5, at 77.

15. *See* notes 24-34 and accompanying text *infra*.

16. *See, e.g.*, Federal United Corp. v. Havender, 24 Del. Ch. 318, 11 A.2d 331 (1940); Bruce v. E.L. Bruce Co., 40 Del. Ch. 80, 174 A.2d 29 (1961).

17. *See* Federal United Corp. v. Havender, 24 Del. Ch. 318, 334, 11 A.2d 331, 338 (1940).

18. These nonmerger cases often involve majority shareholder action relating to the control of corporate assets and internal corporate functioning. An early decision held that while the decision to sell corporate assets is a shareholder determination, the terms of the sale must be fair to the corporation. *See* Allied Chem. & Dye Corp. v. Steel & Tube Co. of Am., 14 Del. Ch. 1, 11, 120 A. 486, 490 (1923). A subsequent case hypothesized that even if the terms of sale are fair, a court of equity might enjoin a merger when a control group attempts to freeze out a minority by selling corporate assets to themselves. *See* Allaun v. Consolidated Oil Co., 16 Del. Ch. 318, 323-24, 147 A. 257, 260 (1929).

More generally, Delaware courts have held that corporate mechanisms may not be used to perpetuate corporate control at another's expense. Thus, the court in Condec Corp. v. Lunkenheimer Co., 43 Del. Ch. 353, 230 A.2d 769 (1967), cancelled an issuance of stock that was designed to frustrate plaintiff's successful tender bid for a majority of defendant's outstanding shares. *See also* Petty v. Penntech Papers, Inc., 347 A.2d 140 (Del. Ch. 1975); Yasik v. Wachtel, The liberal attitude displayed by courts toward mergers has been reinforced by the existence of appraisal rights for stockholders who dissent from a merger.[19] To request an appraisal, a shareholder must vote against the proposal and file a petition in court. The court then determines the value of the dissenting stockholder's interest in the premerger corporation.[20] This appraisal right is significant because it has often been held to be an adequate remedy for a shareholder dissatisfied with a merger.[21]

The favorable predisposition toward corporate combinations, however, has been tempered by various limitations on a control group's right to force a merger in contravention of a minority's interest. Early cases held that a merger would be enjoined when a minority established that a control group had engaged in fraudulent practices. Before the long-form statute provided for cash payments for eliminated shares, a control faction could formulate unfavorable merger terms and virtually assure that dissatisfied stockholders would invoke their appraisal rights and be paid cash for their interests in the premerger company. Notwithstanding the appraisal remedy it was held that in the presence of such fraud a court of equity would enjoin the merger.[22] Moreover, courts went beyond the requirement of actual fraud and recognized a claim for relief based upon a showing of "constructive fraud," a type of fraud that results from a reckless but nondeceptive undervaluation of a minority's interest.[23]

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25 Del. Ch. 247, 17 A.2d 309 (1941). In Schnell v. Chris-Craft Indus., Inc., 285 A.2d 437 (Del. 1971), Chris-Craft's technical compliance with Delaware law in changing the annual shareholders' meeting date was held to be insufficient to prevent a preliminary injunction from issuing when the change was designed to inhibit plaintiff's efforts to solicit proxies for a rival slate of directors. *But see* American Hardware Corp. v. Savage Arms Corp., 37 Del. 59, 136 A.2d 690 (1957). The above cases illustrate the principle that in nonmerger situations, notwithstanding compliance with technical statutory requirements, Delaware courts will carefully scrutinize majority shareholder action to ensure that the noncontrol group is dealt with fairly.

19. *See* DEL. CODE tit. 8, § 262 (1974 & Cum. Supp. 1977).

20. The statute provides that the determination of value should exclude any increment in value arising from the merger itself. *Id.* § 262(f) (Cum. Supp. 1977).

21. *See* note 28 *infra*.

22. *See, e.g.*, Cole v. National Cash Credit Ass'n, 18 Del. Ch. 47, 156 A. 183 (1931).

23. *See id.* at 56-57, 156 A. at 187; *accord*, Porges v. Vadsco Sales Corp., 27 Del. Ch. 127, 133, 32 A.2d 148, 151 (1943); MacFarlane v. North Am. Cement Corp., 16 Del. Ch. 172, 157 A. 396 (1928). One court suggested that the discrepancy between actual and proffered value must shock the court's conscience in order to reach the level of constructive fraud. See Bruce v. E.L. Bruce Co., 40 Del. Ch. 80, 82, 174 A.2d 29, 30 (1961). In cases in which constructive fraud is alleged in mergers involving previously unaffiliated corporations, it has been held that the burden of proof is on the dissenting shareholders to show manifestly unfair terms. *See* Cole v. National Cash Credit Ass'n, 18 Del. Ch. 47, 58, 156 A. 183, 188 (1931); *cf.* Sterling v. Mayflower Hotel Corp., 33 Del. Ch. 293, 298, 93 A.2d 107, 109-10 (Sup. Ct. 1952) (burden of proof shifted in interested mergers). For an illustration of some of the factors a court will consider in determining

In *Sterling v. Mayflower Hotel Corp.*,[24] the seminal case on fiduciary obligations of majority stockholders in interested mergers, the Delaware Supreme Court held that a corporation standing on both sides of a merger has the burden of proving the "entire fairness" of it.[25] The phrase "entire fairness" was not expressly defined by the *Sterling* court, but was employed as the standard to determine whether defendant corporation had used its position to undervalue the minority's interest. In equating fairness with value, however, there is no indication that the *Sterling* court intended fairness to include the necessity of a proper business purpose for the merger; indeed, other cases under Delaware law have held that business necessity is not a consideration under the state's merger statutes.[26]

Subsequent cases involving interested long-form mergers have been inconsistent in applying the fiduciary obligation enunciated in *Sterling*. At times courts have not recognized the applicability of the obligation to prove fairness,[27] while other courts have diluted the impact of *Sterling* by implying that the existence of statutory appraisal mitigates a parent corporation's burden of establishing fairness.[28] This

relative share valuation in proposed mergers, see Bastian v. Bournes, Inc., 256 A.2d 680, 683-84 (Del. Ch. 1969), *aff'd per curiam*, 278 A.2d 467 (Del. 1970).

24. 33 Del. Ch. 293, 93 A.2d 107 (Sup. Ct. 1952). *Sterling* involved a merger challenge in which minority shareholders attacked the proposed share exchange ratio offered by the parent corporation.

25. This fiduciary duty was derived from cases that had construed the duties of corporate directors and officers toward the corporation and its shareholders. The theme that runs throughout these cases is that officers and directors must deal fairly with the corporation and its shareholders. Any actions by which these persons attempt to usurp corporate opportunities, bring benefits solely to themselves, unfairly perpetuate their control over the corporation or favor one class of stockholders over another is a breach of fiduciary duty. *See, e.g.*, Kaplan v. Fenton, 278 A.2d 834 (Del. 1971); Dolese Bros. v. Brown, 39 Del. Ch. 1, 157 A.2d 784 (Sup. Ct. 1960); Guth v. Loft, 23 Del. Ch. 255, 5 A.2d 503 (Sup. Ct. 1939).

26. *See* note 14 *supra*.

27. *See* Bruce v. E.L. Bruce Co., 40 Del. Ch. 80, 174 A.2d 29 (1961). *Bruce* involved an interested merger in which a minority shareholder sought to enjoin the merger on the ground that the proposed exchange ratio for shares was constructively fraudulent. The court dismissed the complaint on the basis that the alleged value of plaintiff's interest was unrealistically high and therefore constructive fraud had not been proven. The court implied that under the circumstances recourse to appraisal was adequate. *Id.* at 82, 174 A.2d at 30. In David J. Greene & Co. v. Dunhill Int'l, Inc., 249 A.2d 427 (Del. Ch. 1968), however, the court followed *Sterling*, holding that the minority shareholders' allegations of unfair valuation and usurpation of corporate opportunities by defendant parent corporation justified the issuance of a preliminary injunction. *Bruce* was distinguished on the ground that the plaintiff in that case had apparently not brought the applicability of *Sterling* to the court's attention. *Id.* at 431.

28. *See* David J. Greene & Co. v. Schenley Indus., Inc., 281 A.2d 30 (Del. Ch. 1971). In *Schenley* the parent corporation conceded its obligation to establish fairness, but the court held that the burden had been met when the parent had established that the price offered was not fraudulent. *Id.* at 33. In so holding, the court reasoned that the parties were merely in a dispute over value, and, because the court construed the rights of a minority stockholder in a long-form

seeming reluctance to give full effect to the *Sterling* decision parallels the Delaware Supreme Court's own interpretation of mergers under the state's short-form merger statute.[29] This provision provides for an expedited merger procedure when one corporation owns at least a 90% interest in another company. Such mergers, involving one corporation on both sides of the transaction, are by definition "interested." Yet in *Stauffer v. Standard Brands, Inc.*[30] the supreme court, despite plaintiff's allegations of constructive fraud, held that in short-form mergers the statutory appraisal right is an adequate remedy when the only relief sought is the monetary value of an interest.[31] In making the availability of appraisal dispositive of the minority's claim, the supreme court in *Stauffer* was impliedly rejecting *Sterling's* requirement that in an interested merger the majority must prove fairness. Furthermore, the court in *Stauffer* noted that it would be difficult to foresee a short-form merger that could be nullified for fraud.[32] The *Stauffer* decision is particularly significant because of one court's holding that due to the presence in both the long- and short-form merger statutes of provisions allowing for cash payments of eliminated interests,[33] the rights of a minority shareholder in long-form mergers are no greater than those in short-form mergers.[34] Thus, prior to *Singer* it appeared that some Delaware courts were prepared to hold that because appraisal constitutes an adequate and complete remedy a long-form cash-out merger could not be enjoined for fraud.

In general, a review of statutory and case law reveals several elements of Delaware corporate law that have influenced courts in determining the legality of majority stockholder action in interested long-

merger to be no greater than those in short-form mergers, appraisal was an adequate remedy for the dissatisfied stockholders. *Id.* at 33, 35.

The *Sterling* court had not specifically addressed the interrelationship between the appraisal remedy and the fiduciary duty of a parent corporation. At a minimum, as the *Schenley* court found, *Sterling* requires the controlling corporation to prove the absence of fraud. A more interesting question is whether the *Sterling* court would have required the control shareholder in *Schenley* to go beyond negating the plaintiff's fraud allegations and make a positive showing of the fundamental fairness of the merger terms. The dismissal of the merger challenge by the *Schenley* court indicates that that court impliedly rejected such a stringent formulation of majority fiduciary duty.

29. DEL. CODE tit. 8, § 253 (1974 & Cum. Supp. 1977).

30. 41 Del. Ch. 7, 187 A.2d 78 (Sup. Ct. 1962).

31. *Id.* at 10-11, 187 A.2d at 80.

32. *Id. But see* Braasch v. Goldschmidt, 41 Del. Ch. 519, 199 A.2d 760 (1964) (motion to dismiss challenge to short-form merger denied when plaintiff alleged fraud by parent corporation).

33. *See* DEL. CODE tit. 8, §§ 251, 253 (1974 & Cum. Supp. 1977).

34. *See* David J. Greene & Co. v. Schenley Indus., Inc., 281 A.2d 30, 35 (Del. Ch. 1971).

form mergers. Influencing merger approval is the view that merger statutes reflect a public policy favoring mergers and, therefore, that mergers should only be enjoined on the basis of supervening equities.[35] This predisposition has been reinforced by the tendency to view the appraisal right as an exclusive remedy[36] and by legislative acts that have both liberalized and reduced the distinctions between the long- and short-form merger provisions.[37] On the other hand, courts have shown a reluctance to sanction the manipulation of corporate machinery for the perpetuation of a control position.[38] Moreover, courts have generally recognized in all long-form mergers that majority shareholders owe a fiduciary duty to act fairly to minority stockholders and that the obligation is strongest when the controlling shareholder is a parent corporation.[39]

In assessing the validity of a long-form merger, particularly one in which one party is interested, it is necessary to accommodate these conflicting decisional factors. Cases prior to *Singer* reveal that the conflict between the factors was resolved by rejecting the necessity of close scrutiny of interested mergers and adopting the view that a minority was dealt with fairly whenever it was paid the fair value of its interest.[40] Often, appraisal was cited as an appropriate mechanism to satisfy this latter goal. *Singer*, in contrast, held that a stockholder has an interest not only in the value of his shares but also in the form of his investment and that therefore appraisal is not an appropriate remedy in a cash-out merger under the long-form statute. The significance of this holding is twofold. First, while there is a recognition that a minority's interest is not inviolable, the Delaware Supreme Court found that it could only be abrogated for a valid business purpose and that the elimination of a minority solely to allow the majority unfettered control does not constitute such a purpose. Second, the decision may be interpreted as reaffirming *Sterling's* emphasis on the fiduciary obligations of majority stockholders, despite contrary trends in Delaware law. Thus, the court expanded the fiduciary obligations of controlling shareholders in cash-out mergers under the long-form statute through the imposition of a requirement of proper business purpose, while it simultaneously em-

35. *See* cases cited notes 16 & 17 *supra*.
36. *See* note 28 *supra*.
37. *See* Balotti, *supra* note 5.
38. *See* note 18 *supra*.
39. *See* notes 27 & 28 *supra*.
40. *See* notes 27-34 and accompanying text *supra*.

phasized that appraisal could not serve as a substitute for fiduciary duty.

In requiring that a business purpose exist in a long-form merger in which a minority is to be eliminated, the *Singer* court arguably did not lay an adequate basis for its decision through analysis of Delaware statutory law and prior decisions. The court relied heavily on a series of nonmerger cases that stand for the proposition that a control faction cannot perpetuate its position at the expense of a minority even when the noncontrol group is paid a fair value for its interest.[41] On the basis of these decisions the *Singer* court held that it is a breach of fiduciary duty in a long-form merger for a majority shareholder to freeze out a minority without a business justification. The applicability of prior merger cases that had either expressed or implied that business purpose has no function in determining the validity of mergers under Delaware law was rejected on the ground that none of those cases involved a cash-out merger whose sole purpose was to eliminate a minority.[42] In its rejection of the applicability of prior merger law, however, the court neglected to address the policy of liberality toward mergers that these decisions exemplified. This leniency, in fact, seems to have traditionally distinguished the application of fiduciary standards in merger cases from the application of such principles in other areas of corporate life.[43] The *Singer* court's reliance on nonmerger case law, therefore, tends to obscure the true significance of the opinion, because it conceals the degree to which the case both strengthens and expands the fiduciary obligations recognized by the *Sterling* court. Nevertheless, the importance of *Singer* to Delaware law will not go unrecognized because the inclusion of business purpose as a component of fiduciary duty in long-form corporate mergers is a significant departure from prior law.[44]

41. *See* 380 A.2d at 976-77. See note 18 *supra* for a discussion of Delaware's treatment of shareholder fiduciary duties in nonmerger situations.

42. *See* 380 A.2d at 978.

43. *See* Balotti, *supra* note 5, at 74-77.

44. The court's opinion left some questions unanswered. The major unanswered question was whose business purpose should be determinative of legality; this problem was resolved in Tanzer v. International Gen. Indus., Inc., 379 A.2d 1121 (Del. 1977), *discussed in* note 13 *supra*. Moreover, while some language in *Singer* might be construed as requiring a business purpose in short-form mergers, the question was not decided. *See* 380 A.2d at 979-80. Short-form mergers cannot automatically be presumed to involve the same fiduciary duties as long-form mergers. The differences in the provisions governing short- and long-form mergers might indicate a legislative judgment that the rights attaching to minority stock ownership are more clearly outweighed by corporate interests when a parent owns over 90% of its subsidiary than when a lesser interest is held. This possibility, however, leads to the anomaly that in some instances fiduciary duty is inversely related to degree of ownership.

Although *Singer v. Magnavox Co.* does not harmonize with prior Delaware merger law, it cannot be condemned as improperly decided. By injecting considerations of business purpose into determinations of merger validity, the supreme court simply recognized a factor not previously deemed important under state law. The propriety of this equitable decision should be assessed in terms of competing policies that favor both mergers and protection of the investment interests of minority shareholders who wish to retain their stock in a corporation. Accordingly, the *Singer* decision clearly does not frustrate the state's substantive policy of corporate flexibility that is revealed in the case law. A corporation may still effect a merger and eliminate a minority's equity interest with a cash or other payment, subject only to the qualifications of fairness and a proper business objective. And, while some might contend that a minority shareholder should only be entitled to the value of his interest,[45] it seems reasonable that an individual, having made an investment, should not be forced to sell out absent some superior interest.[46] The inadequacy of merely receiving share value is particularly apparent in light of the possibility of majority abuse in the valuation of a noncontrol interest and in deficiencies in statutory appraisal rights.[47] The requirement of a business purpose does not, of course, eliminate the problems in either majority valuation or statutory appraisal, but it does help assure that these mechanisms will not be utilized to frustrate the legitimate investment goals of minority stockholders.[48]

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45. *See* Arsht, *supra* note 14. It might be reasonable to conclude that a majority shareholder's interest varies according to the type of merger involved. A distinction might be made between freezeouts of noncontrolling stockholders in close corporations versus those situations in which the freezeout is incident to an acquisition attempt. A business requirement might be more reasonable in the former type of merger. *See* Greene, *supra* note 2, at 499-502.

46. *See* Note, *Elimination of Minority Share Interest by Merger: A Dissent*, 54 NW. U.L. REV. 629 (1959).

47. Various flaws have been identified in construing a right of appraisal as a complete remedy. For example, factors necessary to fairly evaluate an interest may be concealed; the costs incurred in appraisal reduce its value as an option; and when the value of an interest is speculative, conservative results may be expected. *See* Vorenburg, *Exclusiveness of the Dissenting Stockholder's Appraisal Right*, 77 HARV. L. REV. 1189, 1201-05 (1964). Moreover, when the market value of an interest is likely to be determinative of an appraisal decision, the likelihood of a freezeout can depress share value. *See* Greene, *supra* note 2; Solomon, *Going Private: Business Practices, Legal Mechanics, Judicial Standards and Proposals for Reform*, 25 BUFFALO L. REV. 141, 158 (1975).

48. For two recent cases giving broad scope to *Singer*, see Young v. Valhi, Inc., 382 A.2d 1372 (Del. Ch. 1978) (proposed long-form cash-out merger between Valhi and its subsidiary enjoined because Valhi's parent corporation, Contran, breached its duty of fairness in proposing the