

# **New Valuation Governance Requirements**



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Panellists

## David L. Larsen, CPA/ABV/CEIV

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#### **OVERVIEW**

David Larsen is a managing director in the Seattle office of Duff & Phelps and part of the Alternative Asset Advisory service line. He has more than 35 years of transaction and accounting experience. He specializes in fair value accounting issues, and specifically in valuation, accounting, and regulatory issues faced by Alternative Asset managers and investors.

David advises leading Private Equity Managers and Institutional Investors and has advised numerous strategic and private equity acquirers in all areas of mergers, acquisitions, joint ventures, divestitures and valuation related maters. He provides valuation policy and process assistance to a number of the world's largest institutional limited partner investors and some of the world's largest alternative Investment managers.

#### **BACKGROUND**

David is a member of the International Valuation Standards Council Standards Review Board, an advisor to and has served as Vice Chair of the International Private Equity and Venture Capital Valuations Board (IPEV), which in 2018 released updated International Private Equity Valuation Guidelines and serves as a member of the American Institute of Certified Public Accountants (AICPA) PE/VC Practice Guide Task Force. David has served as a special advisor to the Institutional Limited Partners Association; board member, project manager and technical advisor to the Private Equity Industry Guidelines Group and was instrumental in developing and drafting the Private Equity Industry Guidelines Group's Valuation and Reporting Guidelines; member of the Financial Accounting Standards Board's Valuation Resource Group responsible for providing the Board with input on potential clarifying guidance on issues relating to the application of the principles of FASB ASC Topic 820 (formerly SFAS No. 157), Fair Value Measurements and a member of the AICPA Net Asset Value Task Force.

Prior to joining Duff & Phelps, David was a Partner in KPMG LLP's Transaction Services practice, where he was the segment leader of KPMG's U.S. Institutional Investor practice. He served 13 years in KPMG's Seattle, Düsseldorf and Prague audit practices prior to moving full time to advisory work.

David received his M.S. in accounting from Brigham Young University's Marriott School, his B.S. in accounting from Brigham Young University. He is a certified public accountant licensed in California and Washington. David is also a member of the AICPA and the California and Washington Society of Certified Public Accountants and is a FINRA Series 7, 24 and 63 registered representative.

### **Ross Hostetter**

Managing Director, Alternative Asset Advisory, Head of Portfolio Valuation - North America



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#### **OVERVIEW**

Ross Hostetter is a Managing Director in the New York office and is the North American Portfolio Valuation Leader. Ross has more than 25 years of experience serving clients across the financial services industry.

Ross works primarily with private equity funds, hedge funds and business development companies. He has extensive experience both in valuing illiquid securities and in establishing best in class valuation policies and procedures. He has valued illiquid securities across capital structures, industries and geographies and has performed business valuations and intangible asset valuations for a diverse range of companies.

#### **BACKGROUND**

Prior to Duff & Phelps, Ross was a director at Standard & Poor's Corporate Value Consulting (CVC). Prior to CVC, Ross worked at PricewaterhouseCoopers (PwC) as a tax associate in the PwC Charlotte office for three years, where he advised on federal and state corporate tax issues, and in the London office as a tax manager. While working with the Banking and Capital Markets group in London, Ross focused on advising financial services clients on U.K. corporate tax and international tax issues.

Ross received his undergraduate degree from the University of Georgia and his MTx from Georgia State University

## **Jennifer Press**

#### Managing Director, Alternative Asset Advisory



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#### **OVERVIEW**

Jennifer Press is a Managing Director in the New York office and part of the Alternative Asset Advisory practice. She brings over 19 years of experience in pricing, trading, structuring and analyzing complex financial instruments.

Jennifer is responsible for service capabilities in structured credit and whole loans. She brings with her fixed-income and capital markets experience over which time she has focused on valuation, trading, structuring, hedging, and risk management activities across all of structured credit. Jennifer is adept at identifying and applying risk and valuation approaches that are appropriate to a spectrum of underlying product areas, developing a particular strength in valuation of esoteric products like residuals, re-securitizations, and performing and nonperforming whole loan pools.

#### **BACKGROUND**

Previously, Jennifer was the Portfolio Manager / Senior Mortgage Trader for Tower Research Capital's Distressed Mortgage / ABS Fund. There she implemented strategies to capitalize on relative value discrepancies focusing on Non-Agency Mortgage Backed Securities (RMBS). Additionally, she played a vital role in the construction of the team and informed current and potential investors about investment strategies as well as market conditions.

Prior to that she was a Senior ABS Analyst at Marathon Asset Management where she sourced, analyzed, and traded ABS Securities as well as portfolios for both their Structured Finance fund as well as their Distressed Mortgage Fund. Additionally, she helped create internal analytics used both for investing as well as portfolio management.

Prior to Marathon, Jennifer was a Senior ABS Analyst at Dynamic Credit Partners. Jennifer started her career at JP Morgan where she worked in various areas including Interest Rate Derivatives, Credit and the Asset Backed Securities Proprietary Trading group.

Jennifer received a Masters in Computational Finance from Carnegie Mellon University's Tepper School of Business, Bachelor of Science in Economics with concentrations in Finance, Accounting, and Information Systems from The University of Pennsylvania's Wharton School, and a Bachelor of Science in Engineering in Systems Engineering from the University of Pennsylvania's Engineering School.



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About
Duff & Phelps, A
Kroll Business

# **Duff & Phelps Alternative Asset Advisory**

Duff & Phelps assists clients with design and implementation of best-in-class valuation policies and processes, including on-going review of valuation procedures and conclusions to ensure best practices.

### **Market Leader**

- Our client base consists of 400 alternative asset fund managers and investors in the U.S. and globally
- We perform in-depth valuation analyses of all asset types for clients across the spectrum of banks, hedge funds and private equity firms globally:
  - > 70% of the top 25 largest Hedge Funds
  - > 70% of the top 25 largest Private Equity Funds
  - > 50% of the top 25 largest publicly traded Hedge Fund platforms (business development companies or "BDCs")
  - > Our client base includes 20 BDCs
  - Private debt funds and mid-market private equity funds are the fastest growing segment of our client base
- We review or value over 10,000 investment positions on a quarterly basis, including derivatives and structured products

# Thought Leader

- We are at the forefront of the industry's leading committees on valuation processes, guidelines, and regulations:
  - > IPEV Special Advisor, Former Board Member
  - ILPA Special Advisor
  - > AICPA PE/VC Valuation Guide Task Force Member
  - > FASB Valuation Resource Group Member
  - Managed Funds Association Sustaining Member
  - > IVSC Standards Review Board -- Member
- Leadership on drafting IPEV and PEIGG private equity valuation guidelines
- Development of Duff & Phelps Created Value Attribution Framework.

Duff & Phelps' Portfolio Valuation practice enables alternative investment managers to enhance their valuation process with the <u>independence</u> and <u>objectivity</u> that investors require.

# **ABOUT DUFF & PHELPS, A KROLL BUSINESS**

For nearly 100 years, Duff & Phelps has helped clients make confident decisions in the areas of valuation. real estate, taxation and transfer pricing, disputes, M&A advisory and other corporate transactions.

Kroll is the world's premier provider of services and digital products related to governance, risk and transparency. We work with clients across diverse sectors in the areas of valuation, expert services, investigations, cyber security, corporate finance, restructuring, legal and business solutions, data analytics and regulatory compliance.

The firm's nearly **5,000 professionals** are located in 30 countries and territories around the world.

~5,000

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**CLIENTS INCLUDING NEARLY** 

48% OF THE

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THE **AMERICAS** 

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**PROFESSIONALS** 

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Our service areas









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- Alternative Asset Advisory
- Real Estate Advisory
- Tax Services
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- Transaction Advisory Services
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- Lucid Agency and Trustee Services
- Kroll Class Action Administration
- Kroll Mass Tort Administration
- Kroll Notice Media Solutions
- Kroll Business Technology
- · Kroll Agency Cloud

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#### **WE SERVE**

61% of Fortune 100 companies

85% of Am Law 100 law firms

72% of the 25 largest Euro STOXX® companies

**76%** of the 25 largest private equity firms in the PFI 300

**52%** of the 25 largest hedge funds in the Alpha Hedge Fund 100

#### **WERANK**

One of America's Best Management Consulting Firms 20209

**#1** Total Number of U.S. and Global Fairness Opinions Over the Past 10 Years<sup>1</sup>

**#5** U.S. Middle-Market Transactions Over The Past 10 Years<sup>2</sup>

Leading patent consulting firm<sup>11</sup>

#### **WEWON**

Best Cyber Security Services Provider<sup>4</sup>

Best Compliance Consultancy Firm<sup>5</sup>

**Thought Leader** in Digital Forensics, Arbitration and Investigations<sup>3</sup>

International Mid-Market M&A Advisory Firm of the Year in Canada – 2020<sup>6</sup>

**Thought Leader** in Corporate Tax and Digital Forensics<sup>7</sup>

Best Valuations Firm for Hard-to-Value Assets<sup>8</sup>

**Kroll recognized** as Pacesetter in the ALM Intelligence: Cybersecurity Services 2020

Duff & Phelps and Kroll named **Best Compliance** Consultant/Advisor 10

Recommended Vendor for Security Incident Response in Gartner® Invest Analyst Insight: SRM 2020 and 2019

- 1. Source: Thomson Reuters' cumulative data 2011-2020
- Source: Thomson Financial Securities Data (U.S. deals \$10M < \$150M, including deals without a disclosed value). Full years 2011 through 2020
- Who's Who Legal 2018-2020: Forensic and Litigation Consulting.
- HedgeWeek 2018

- 5. HFM European Quant Awards 2019
- 6. 2020 Corporate INTL Global Awards
- 7. Who's Who Legal 2019
- 8. 11th Annual HFM European Hedge Fund Services Awards in 2019

- 9. America's Best Management Consulting Firms Forbes
- 10. Compliance Week's 2020 Excellence in Compliance Awards
- 11. IAM Patent 1000 2020

## **VALUATION PROFESSIONAL AFFILIATIONS**

Respected across the globe for our expertise

Our managing directors provide input to regulators and standard-setters and actively contribute to the development of valuation industry best practices.









































03

SEC/ PCAOB Developments

# **Key Governance Developments**

All investors in private debt and equity, especially registered investment advisers, registered investment companies (including mutual funds) and business development companies are impacted by three key events that occurred in December 2020:

- The U.S. Securities and Exchange Commission (SEC) adopted Rule 2a-5 which establishes a new comprehensive framework for estimating fair value "in good faith" and overseeing the valuation process, replacing the existing 50-year-old rules.
- The Public Company Accounting Oversight Board's (PCAOB) audit standard focused on auditing fair value and use of pricing services and broker quotes became effective.
- The SEC issued a cease and desist order and an \$8 million fine for a pricing service that was not providing fair value compliant valuation inputs.

## **SEC EXAMS Priorities**

The US Securities and Exchange Commission has renamed OCIE (Office of Compliance Inspections and Examinations) as the Division of Examinations (EXAMS). Recently EXAMS released their 2021 examination priorities which include:

- Assessing compliance programs including fees and expenses, business continuity plans, and valuation of client assets for consistency and appropriateness of methodology.
- Focusing on valuation and the resulting impact on fund performance, liquidity, risk-related disclosures and higher risk of non-performance, for investments in market sectors that experienced, or continue to experience, stress due to the pandemic, such as energy, real estate, or credit.
- Considering the consistency and adequacy of the disclosures RIAs and fund complexes provide to clients regarding investment strategies such as ESG.
- Focusing on advisers to private funds that have a higher concentration of structured products, such as collateralized loan obligations and mortgage backed securities.



04

New SEC Fair Value Guidance

## **SEC New Rules 2a-5 & 31a-4**

#### Released December 3, 2020--Modernize Registered Fund Valuation Requirements

#### 2a-5 Headlines

- Establishes requirements for satisfying a board's obligation to determine fair value in good faith under the Investment Company Act of 1940
- Applicable to Registered Investment Companies (Mutual Funds, Business Development Companies (BDCs), Unit Investment Trusts (UITs))
- Rescinds ASR 113 and 118 (dating back to 1969/1970)
- Allows a fund's board to assign the determination of fair value to the fund's investment advisor
- The Board retains the responsibility for effective valuation oversight

#### 31a-4 Headlines

Governs appropriate documentation and designation of record keeping requirements

What about funds managed by a Registered Investment Advisor (private equity, venture capital, hedge, real estate, etc.)?

• Provides a road map of how the SEC is thinking about valuation governance and potential expectations for managers of private funds

## Why is a new rule needed?

### Existing Valuation Framework is 50 years old

- Significant changes in the types of investments made by Registered Funds
- Changes in valuation processes and techniques
- Expanded use of pricing services
- Changes in Generally Accepted Accounting Standards (ASC Topic 820 & 946)
- Questions as to whether Board's are fulfilling their duties in a world that has changed significantly since 1970

#### • Why now?

- Demonstrated need for modernization
  - Sarbanes-Oxley Act of 2002 Establishment of the PCAOB
  - Adoption in 2003 of compliance rules under the Investment Company Act and the Advisors Act (rule 38a-1)
  - FASB's issuance in 2006 of ASC Topic 820 (then known as SFAS 157) which defined fair value for purposes of accounting standards
- Concerted effort over the past two years

# What does rule 2a-5 say?

- Defines Fair Value (different than ASC Topic 820, but conceptually the same)
  - The value of a portfolio investment for which market quotations are not readily available.
    - This definition is congruent with valuing an investment under ASC Topic 820 using level II or level III inputs
- Defines Readily Available Market Quotations
  - A market quotation is readily available only when that quotation is a quoted price (unadjusted) in active markets for identical investments that the fund can access at the measurement date
  - A market quotation is not readily available if it is not reliable
    - This definition is congruent with valuing an investment under ASC Topic 820 using level I inputs
- Provides requirements for *determining fair value in good faith* in accordance with section 2(a)(41) of the Investment Company Act of 1940

# What does rule 2a-5 say? (cont.)

### Rule 2a-5 Requires the following with respect to determining fair value in good faith:

- 1) Assess and manage valuation risks
- 2) Establish and apply fair value methodologies
- 3) Test fair value methodologies
- 4) Evaluate pricing services

#### Board Responsibilities:

- The Board must determine fair value in good faith by caring out requirements 1 through 4 above.
- The Board may choose to designate the determination of fair value to a designee who performs the requirements of 1 through 4 above for any or all investments (subject to the additional responsibilities highlighted on the next slide).
  - Valuation Designee means the investment adviser, other than a sub-adviser, of a fund or, if the fund does not have an investment adviser, an officer or officers of the fund.

# What does rule 2a-5 say? (cont.)

- Additional Board Responsibilities (if fair value determination is designated to a designee—the investment adviser):
  - Oversight and Reporting
    - The board oversees the valuation designee
    - The valuation designee reports to the fund's board, in writing, the following:
      - Quarterly :
        - Reports or materials requested by the board outlining the fair value process
        - A summary or description of material fair value matters that occurred in the prior quarter, including:
          - Material changes in the assessment and management of valuation risks, including material changes in conflicts of interest of the valuation designee (and any other service provider)
          - Material changes to, or material deviations from the fair value methodologies established
          - Material changes to the valuation designee's process for selecting and overseeing pricing services, as well as material events related to the oversight of pricing services.

# What does rule 2a-5 say? (cont.)

 Additional Board Responsibilities (if fair value determination is designated to a designee—the investment adviser):

#### Oversight and Reporting

- The board oversees the valuation designee
- The valuation designee reports to the fund's board, in writing, the following:
  - Annually:
    - Assessment of the adequacy and effectiveness of the designee's fair value process, including at a minimum:
      - Summary of the results of testing of fair value methodologies
      - An assessment of the adequacy of resources allocated to the process for determining fair value, including material changes to the roles or functions of the persons responsible for determining fair value
  - Prompt board notification and reporting of matters that materially affect the fair value of investments
    - Significant deficiency or material weakness in the design or effectiveness of the designee's valuation process
    - Material errors in the calculation of net asset value (within 5 business days)

#### Specify Responsibilities

- Specify Titles of persons responsible for determining fair value and the functions for which they are responsible
- Portfolio manager(s) may not determine or effectively determine the fair value ascribed to portfolio investments

## **Impact on Fund Governance & Controls**

### Expansion of Board duties?

- > Boards retain responsibility for determining fair value in good faith
- Codifies and formalizes current fund valuation practices
- Specifically highlights oversight and testing requirements
- Possible board liability and enforcement exposure
- Heightened board oversight responsibility, reporting and recordkeeping requirements
- Valuation legwork can be delegated to the adviser, if required Board oversight is in place
- Defining readily available market quotations and fair value congruent with ASC Topic 820 is exceedingly helpful
- Potential changes in existing valuation processes may include the need to:
  - Expand reporting to the Board
  - Test fair value methodologies
  - Determine material valuation risks
  - > Expand evaluation and oversight of pricing services
  - Expand record keeping
  - Impose a duty on Advisers to report errors or changes promptly

## **Compliance & Enforcement Risk**

#### **Questions of Board Liability**

- Does delegation of valuation authority insulate fund directors from responsibility?
- ➤ Is lack of subject matter expertise a defense?

### **Future of SEC Valuation Inspection and Enforcement**

- Valuation is an ongoing priority
- Best practices gleaned from examinations and compliance
- To what extent will rule 2a-5 impact private fund advisers and compliance programs?



O5
PCAOB Audit
Standard 2501

## **New PCAOB Audit Standard Now Effective**

In December 2018 the PCAOB adopted two new rules:

- A new standard to enhance the requirements that apply when auditing accounting estimates, including fair value measurements.
  - Replaces three standards with a single, uniform standard that sets forth an updated approach
    to auditing accounting estimates. It emphasizes that auditors need to apply professional
    skepticism, including addressing potential management bias, when auditing accounting estimates.
    Additionally, the new standard provides more specific direction on auditing fair values of
    financial instruments that are based on information from third-party pricing sources.
- Amendments to its auditing standards to strengthen requirements that apply when auditors use the work of specialists in an audit.
  - Strengthen the requirements for evaluating the work of a company's specialist, whether employed or engaged by the company. They also apply a supervisory approach to both auditor-employed and auditor-engaged specialists.
  - Creates separate requirements for using a company's specialist, an auditor-employed specialist, and an auditor-engaged specialist,
- Both take effect for audits for fiscal years ending on or after December 15, 2020.

# PCAOB's Stance on Pricing Services AS 2501 – Appendix A

**.A4** The following factors **affect the relevance of pricing information** provided by a pricing service:

- a. The **experience and expertise** of the pricing service relative to the types of financial instruments being valued, including whether the types of financial instruments being valued are routinely priced by the pricing service;
- b. Whether the **methodology used** by the pricing service in determining fair value of the types of financial instruments being valued **is in conformity with the applicable financial reporting framework** (compliant with ASC Topic 820); and
- c. Whether the pricing service has a relationship with the company by which company management has the ability to directly or indirectly control or significantly influence the pricing service.

# PCAOB's Stance on Pricing Services AS 2501 – Appendix A

**.A5** The following factors **affect the relevance of pricing information** provided by a pricing service:

- a. Whether the **fair values are based on quoted prices in active markets** for identical financial instruments;
- b. When the fair values are based on transactions of similar financial instruments, how those transactions are identified and considered comparable to the financial instrument being valued; and
- c. When no recent transactions have occurred for either the financial instrument being valued or similar financial instruments, or the price was developed using a quote from a broker or dealer, how the fair value was developed, including whether the inputs used represent the assumptions that market participants would use when pricing the financial instruments.
- .A6 When the fair values are based on transactions of similar financial instruments, the auditor should perform additional audit procedures to evaluate the process used by the pricing service, including evaluating how transactions are identified, considered comparable, and used to value the types of financial instruments selected for testing.

# PCAOB's Stance on Pricing Services AS 2501 – Appendix A

- .A7 When no recent transactions have occurred for either the financial instrument being valued or for similar financial instruments, the auditor should perform additional audit procedures, including evaluating the appropriateness of the valuation method and the reasonableness of observable and unobservable inputs used by the pricing service.
- .A8 When pricing information is obtained from multiple pricing services, less information is needed about the particular methods and inputs used by the individual pricing services when the following conditions are met:
  - a. There are **recent trades** of the financial instrument or of financial instruments substantially similar to the financial instruments being valued;
  - b. The type of financial instrument being valued is **routinely priced** by several pricing services;
  - Prices obtained are **reasonably consistent** across pricing services, taking into account the nature and characteristics of the financial instruments being valued, and market conditions; and
  - d. The pricing information for the type of financial instrument is generally **based on inputs that** are observable.

**Note:** When the above conditions are not met, the auditor should perform additional audit procedures, including evaluating the appropriateness of the valuation method and the reasonableness of observable and unobservable inputs for a representative price for the type of financial instrument being valued.

## **PCAOB's Stance on Broker Quotes**

- .A9 When the company's fair value measurement is based on a quote from a broker or dealer ("broker quote"), the relevance and reliability of the evidence provided by the broker quote depend on whether:
  - a. The broker or dealer is free of relationships with the company by which company management can directly or indirectly control or significantly influence the broker or dealer;
  - b. The broker or dealer making the quote **is a market maker** that transacts in the same type of financial instrument;
  - c. The broker quote **reflects market conditions** as of the financial statement date;
  - d. The broker quote **is binding** on the broker or dealer; and
  - e. There are any **restrictions**, **limitations**, **or disclaimers** in the broker quote and, if so, their nature.

**Note:** Broker quotes generally provide more relevant and reliable evidence when they are timely, binding quotes, without any restrictions, limitations, or disclaimers, from unaffiliated market makers transacting in the same type of financial instrument. If the broker quote does not provide sufficient appropriate audit evidence, the auditor should perform procedures to obtain relevant and reliable pricing information from another pricing source pursuant to the requirements of the appendix.

## **Unobservable Inputs**

- .A10 When the valuation of a financial instrument includes unobservable inputs that are significant to the valuation, the auditor should obtain an understanding of how unobservable inputs were determined and evaluate the reasonableness of the unobservable inputs by taking into account the following:
  - a. Whether modifications made to observable information generally reflect the
     assumptions that market participants would use when pricing the financial instrument,
     including assumptions about risk; and
  - b. How the company determined its fair value measurement, including whether it appropriately considered the information available.

# Why the new PCAOB standards are important and what has to be done?

- While these requirements apply to the auditor, they likely will have an indirect impact on other stakeholders such as chief financial officers and other members of management and staff involved in and responsible for preparing financial statements
- If the consistency, quantity or actionability of broker quotes or transaction data is absent, it
  may be necessary to move to alternative Level II or Level III (unobservable model-based)
  inputs
- If broker quotes lack relevance or reliability, a model-based approach to valuation using discounted cash flows or other market inputs will likely be necessary



06

Registered and Private Fund Governance

## SEC 2020 Cease & Desist Order

- December 2020, the SEC issued an administrative order and reached an \$ 8 million settlement with respect to a pricing service that provided pricing data to clients which was deemed inconsistent with and did not reasonably reflect the value of certain securities.
- Both the PCAOB standard and the SEC rule specifically highlight a focus on pricing services and using broker quotes to value certain securities.
- When taken together these directives highlight the need for registered investment advisers and boards of registered investment companies to reassess their fair value governance procedures, especially as they relate to broker quotes and other pricing data.

# Private and Registered Fund Governance to-do list Key considerations

- Read and consider implications of rule 2a-5
- Read and consider implications of PCAOB AS 2501 (especially appendix A)
- Continue to evaluate the experience and expertise of the pricing service relative to the types of financial instruments being valued
- Evaluate the transparency of values provided by pricing services (are prices based on contemporaneous trades for similar investments (size/type).
- Evaluate the actionability of prices provided by Brokers
- Consider the extent of testing needed in the valuation process
- Regularly review AICPA PE/VC Valuation Guide
- Read and consider commenting on IVSC Financial Instrument Valuation Standards exposure draft

Regularly update valuation policies and processes



07

Questions?



### For more information, please contact:

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#### About Duff & Phelps, A Kroll Business

For nearly 100 years, Duff & Phelps has helped clients make confident decisions in the areas of valuation, real estate, taxation and transfer pricing, disputes, M&A advisory and other corporate transactions. For more information, visit <a href="https://www.duffandphelps.com">www.duffandphelps.com</a>.

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