

Figure 1
Counseled Appraisal Petitions per Year, 2004-2013

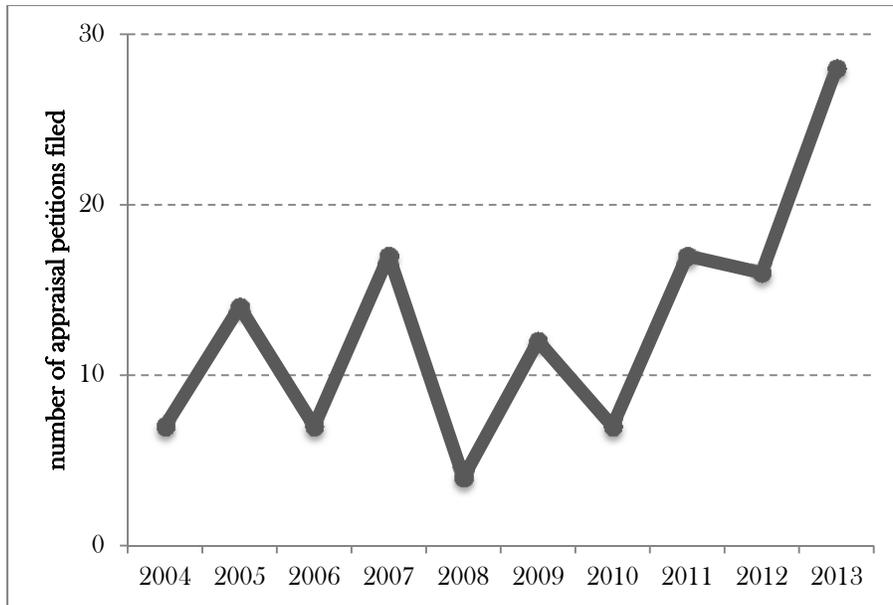


Figure 1 shows the effective year of the underlying transaction, rather than the filing year of the petition.⁶⁸ The reason for focusing on the transaction is that a petitioner has 120 days following the effective date to file a petition, and the effective date better captures the timing from the perspective of the appraisal investor, who will have already begun the process of dissenting at that point. The basic change in appraisal activity is evident from Figure 1. The level of appraisal activity in 2011 and 2012 was matched earlier only in 2007, and activity in 2013 has only increased. This represents a lower bound of appraisal activity in Delaware because some claims by dissenting shareholders are resolved before the petition is ever filed.⁶⁹

⁶⁸ If, for example, a transaction closed on December 31, 2012, and a petitioner filed for appraisal on January 1, 2013, the petition would be included in the statistics for 2012.

⁶⁹ Dissenters have until 120 days after a merger closes to file an appraisal petition. *See supra* at XX. Potential claims may be settled during this period without a petition ever being filed. Because these settlements would only be binding on the parties to them, they would not need to be filed publicly and are thus not reflected in our data set. Thus, the number of actual appraisal disputes is necessarily larger than the universe of petitions that we are able to observe. It is thus possible that total appraisal activity—including settlement discussions that never result in a petition being filed—has not increased as much as Figure 1 suggests. It may be that more appraisal petitioners who once would have been able to quietly settle are now being forced to file and thus make their claims public (and observable)—though discussions with experienced counsel make this possibility seem remote.