



The rise in repeat petitioner value beginning in 2010 is immediately apparent. Before 2010, appraisal appears to have been largely a one-off exercise for aggrieved stockholders. Repeat petitioners played a small role, and there is little evidence that funds were seeking appraisal as part of a considered investment strategy. Starting in 2010, however, and accelerating through 2013, the repeat petitioner dominates. Indeed, every appraisal case filed in 2013 involved at least one repeat petitioner.

By virtue of the unique standing requirements in appraisal,<sup>71</sup> these specialized appraisal petitioners are typically able to invest in the target company after the announcement of the transaction they challenge. The decision to invest, then, is based on a calculation that the amount they will be able to recover in an appraisal proceeding in Delaware—via trial or settlement—will exceed the merger price by enough to offer an attractive return. This practice can be fairly characterized as appraisal arbitrage—by analogy to traditional merger arbitrage<sup>72</sup>—and those who practice it may be termed appraisal

<sup>71</sup> See *supra* at XX.

<sup>72</sup> Hedge funds have long practiced merger arbitrage, taking positions after announcement of a merger, intending to profit by either predicting the reaction of the stock prices of the target and acquiring companies or by predicting the likelihood and timing of the consummation of the announced merger. See, e.g., IMF, Global Financial Stability Report, at 52 (Sept. 2004), available at <http://www.imf.org/external/pubs/ft/GFSR/2004/pdf/gfsr0904.pdf> (defining merger arbitrage); Houman B. Shadab, *The Law and Economics of Hedge Funds: Financial Innovation and Investor Protection*, 6 BERKELEY BUS. L.J. 240, 270 (2009) (“A type of corporate event driven strategy is merger arbitrage, which seeks to purchase the stock of a company that has just announced it will be acquired and sell short the stock of the acquiring company with the expectation that the acquiring company’s stock will fall after the acquisition and the acquired company’s stock will increase.”); Mark