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Transaction Price as a Measure of Fair Value in an Appraisal? Delaware Supreme Court Weighs In

by Joelle E. Polesky

The Supreme Court of Delaware's long-awaited decision on the role of transaction price in an appraisal proceeding to determine fair value of shares has arrived. However, contrary to the expectations of many, it did not pronounce a bright-line rule regarding transaction price as a measure of fair value. Instead, it deferred to the appraisal statute's mandate that the Court of Chancery "take into account all relevant factors," while providing guidance on the importance of a deal price resulting from an arms-length, conflict-free sales process. *See DFC Global Corporation v. Muirfield Value Partners, L.P.*, No. 518, 2016 (<http://courts.delaware.gov/Opinions/Download.aspx?id=260240>) (Del. Aug. 1, 2017).

Appraisal rights arise when the holder of shares in a Delaware corporation is, by merger or other transaction, deprived of ownership rights. Pursuant to 8 Del. C. § 262, the shareholder, after following a statutorily prescribed demand process, can seek a judicial declaration in the Court of Chancery of the fair value of the shares. In an appraisal proceeding, the Court of Chancery exercises its discretion in determining fair value based on "all relevant factors," including, inevitably, the valuation light shed by experts battling over, among other issues, comparable companies, discounted cash flows and the accuracy of deal price. A series of recent appraisal decisions by the Court of Chancery, in which deal price fluctuated from the determinative factor to an element on which the Court placed little weight (*see In re Appraisal of Pet Smart, Inc.*, C.A. No. 10782-VCS (<http://courts.delaware.gov/Opinions/Download.aspx?id=257260>) and *In re Appraisal of Dell Inc.*, C.A. No. 9322-VCL (<http://courts.delaware.gov/Opinions/Download.aspx?id=241590>)), led many to believe the Supreme Court would use the DFC Global appeal to pronounce guidelines addressing the role of deal price as a measure of fair value.

However, the Supreme Court refused to adopt a rule stating deal price is the best evidence of fair value even under specific market conditions. Its rationale for rejecting such a bright-line measure is rooted in its respect for the broad statutory discretion accorded the Court of Chancery "to determine the fair value of the company's shares, considering 'all relevant factors.'" Nonetheless, the Supreme Court's suggestive language about transaction price as an accurate measure of fair value following "a robust market search" is a strong indicator of its bias:

[O]ur refusal to craft a statutory presumption in favor of the deal price when certain conditions pertain does not in any way signal

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our ignorance to the economic reality that the sale value resulting from a robust market check will often be the most reliable evidence of fair value, and that second-guessing the value arrived upon by the collective views of many sophisticated parties with a real stake in the matter is hazardous.

Thus, despite rejecting a “presumption in favor of the deal price,” the Supreme Court recognized, under the facts before the Court of Chancery, “economic principles suggest that the best evidence of fair value was the deal

price, as it resulted from an open process, informed by robust public information, and easy access to deeper, non-public information, in which many parties with an incentive to make a profit had a chance to bid.”



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