

## Houlihan Capital & Fairness Opinions

Any dissenting minority shareholder group poses a risk to the success of a transaction. Thus, as scrutiny regarding M&A deals increases, independent Fairness Opinions are just as important as ever.

Lawyers, accountants, consultants, and other advisors stress the importance of the Fairness Opinion as a shield against shareholder dissension. When a change-of-control occurs, a Fairness Opinion increases the probability that the Directors' decision will be protected by the business judgment rule. Generally, the judicially constructed rule entails five elements: a business decision, 'disinterestedness, 'due care, 'good faith, 'and no abuse of discretion.' The business judgment rule promotes the ability of a Board of Directors to defend its decisions as sound business judgment and to escape liability in the event of dissident minority shareholder lawsuits.

The main purpose of a Fairness Opinion is to determine whether the terms of a deal are fair to the shareholders— particularly minority shareholders. A fairness opinion from an independent advisor introduces an objective perspective that is free of conflicts of interest. Although no federal laws or government agencies strictly require Fairness Opinions, they are widely considered obligatory. However, a Fairness Opinion is not the following:

- Not an estimate of the proper consideration for a transaction;
- Not a substitute for your own due diligence or good judgment;
- Not an indemnification or guarantee;
- Not an insurance policy;
- Not a recommendation on whether to complete a deal;
- Not an investment recommendation;
- Not an evaluation of the business rationale of the deal;
- Not an evaluation of the other terms of the deal (lockups, termination fees, etc.)

A Houlihan Capital Fairness Opinion is factually supported, analytically completed, and is valuable to all interested parties. We are highly experienced with complex merger & acquisition transactions and have the experience in virtually every conceivable business combination and change of control.

**For more information, please contact:**

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