Fairness Opinions: Uses & Issues

> **"It's far better to buy a wonderful company at a fair price than a fair company at a wonderful price."**
> --Warren Buffett, CEO Berkshire Hathaway (1989 annual report)

Fairness Opinions

A fairness opinion, by definition, is a letter prepared by an experienced investment banker or business appraiser, which states whether or not a transaction – from a financial point of view – is fair. The fairness opinion speaks to the fairness of the financial terms of a transaction, as of a specific date, and given a set of assumptions.[1] In this context, "Fairness" parallels the notions of unbiased, impartial, and just. As denoted by the colloquial term "fair play" or the business phrase "an arm's length transaction," a fairness opinion represents whether a deal is fair to shareholders, particularly a company's minority shareholders, all material matters and circumstances considered.

The opinion speaks only to fairness from a financial point of view. "The limiting phrase 'fair, from a financial point of view' serves to indicate the scope of the experience and professional qualifications of the investment bank or valuation firm providing the opinion. It is not opining as to whether the transaction is fair from a legal viewpoint, nor is it recommending the transaction from the point of view of the corporation."[2] The Board of Directors maintains full responsibility for recommending what is in the best interest of the shareholders and for retaining counsel to advise on the legality of a transaction.

A fairness opinion is not intended to constitute a recommendation as to how shareholders should vote on any action nor is it a recommendation as to the investment merit of the Company's securities. A fairness opinion does not attest to the anticipated income tax consequences of the transaction, nor does it address the relative merits of the transaction. It does not express any opinion as to the structure, terms or effect of any other aspects of the transaction, including any effects resulting from environmental issues, the application of any bankruptcy proceeding, fraudulent conveyance, or other international, federal or state insolvency law, or of any pending or threatened litigation affecting the Company. A fairness opinion does not endorse a Board's decision to proceed with a transaction without seeking prior consent from shareholders. Ultimately, a fairness opinion speaks only to the fairness of the transaction from a financial point of view.

The Purpose of a Fairness Opinion

The utility of fairness opinions is singular and self-evident. "They represent the judgment of an independent and experienced professional, applying recognized principles of valuation, about the fairness to its client's stockholders of the financial terms of a transaction."[3] The immediate purpose of a fairness opinion is to determine whether the terms of a deal are fair to shareholders – particularly minority shareholders. Lee and Matthews[4] distinguish two component objectives: (1) to provide a decision-maker with essential information, and (2) to act as an element of proof that the decision-maker used reasonable business judgment in making a decision on behalf of others.

1 The Handbook of Advanced Business Valuation, edited by Robert F. Reilly and Robert P. Schweihs (2000), p. 310.
2 Ibid.
3 "A New Cloud over Wall Street?" by Arthur Fleischer, The New York Times, June 8, 1986, Sec.3, p.2, col.3.
4 "Fairness Opinions," by M. Mark Lee, CFA and Gilbert E. Matthews, CFA.

To understand the importance of fairness opinions, consider their origin. Development of the fairness opinion began as a form of defense and legal protection for the decisions of Boards of Directors.[5] It is clear that dissenting shareholders may pose a substantial threat in the event that they challenge the terms of a deal with a class action lawsuit. Therefore, the purpose of the fairness opinion "is to provide an objective standard against which directors, shareholders, and other interested parties may measure proposals and opportunities concerning their company. Such opinions also help insulate directors from the charge that they violated their fiduciary duties by facilitating their invocation of the business judgment rule. Directors may derive substantial comfort from these opinions in the event their decisions with respect to corporate proposals or opportunities are challenged or litigated."[6] From a broader perspective, it is also clear that fairness opinions introduce a system of checks and balances to corporate finance transactions where a change of control is involved.

Components of a Fairness Opinion

A fairness opinion discusses price, terms, and other unique characteristics of a transaction that impact the economics of a deal. The deal economics are compared to similar historical transactions and any unique considerations are explained and evaluated. Underlying assumptions to the transaction are scrutinized and industry and economic trends are studied. Observations, impressions and commentary on site visits and management interviews may also be summarized.

Houlihan explicitly states the factors considered and the processes used to review the historical, current and forecasted outlook of the transaction. Houlihan explains the negotiated deal economics and establishes a valuation range within which the transaction is fair to shareholders. Houlihan states what material facts were investigated and verified and those that were not. Any potential conflicts of interest, if any, are also disclosed.

Are Fairness Opinions rigueur?

Although no federal laws or government agencies strictly require fairness opinions, they are widely considered de rigueur (that is, required or prescribed by custom; obligatory). Fairness opinions grew out of state case law and are required by section 1203 of the California Corporate Code, which requires a fairness opinion for tender offers made by certain insiders.
An article in the Texas Bar Journal stressed the importance of fairness opinions:

> "A fairness opinion is necessary in every significant transaction involving the sale, purchase, or exchange of a company's capital stock, especially when an identifiable group exists which might contest the transaction…. As a general rule, directors of a corporation who are contemplating a merger-type of transaction should always consult with the corporation's legal counsel to determine whether a fairness opinion or valuation is warranted."[7]

Another article, from Investment Dealers' Digest, unveils the decision in the 1997 mega- merger of Salomon Brothers and Smith Barney:

> "Salomon Inc.'s proxy statement reveals that neither Salomon nor Travelers, its merger partner, hired an outside firm to write a fairness opinion supporting the value of the stock deal."
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> "While a fairness opinion is not required under Delaware law—where both companies are incorporated—a report from a disinterested third party is widely considered de rigeur [sic] to protect board members against lawsuits from disgruntled shareholders who expect a higher price."
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> " 'It's extraordinary,' said a prominent M&A lawyer who asked for anonymity because his firm sometimes

5 "Who Says It's a Fair Deal?" by Paul Sweeney, Journal of Accountancy, August 1999, pp.44-51.
6 "Fair is Fair: Obtaining a fairness opinion," by Jay Cooke, Texas Bar Journal, January 1988, pp. 28-29.
7 Ibid.

works with Salomon and Travelers. 'I tell clients they are nuts not to get an opinion if the deal is up for a shareholders' vote. Directors may have conflicts of interest, and a fairness opinion is relatively cheap insurance.' "

"The risks of Salomon's decision were highlighted by the proxy's declaration that four complaints were filed in Delaware's Court of Chancery against the firm in late September (1997). They allege that Salomon's directors breached their fiduciary duty by negotiating the deal without first 'obtaining a market check of Salomon's value.' "[8]

Rule 2290 (Safe Guard of Independence, Disclosure Requirements or Restrictions on Fairness Opinions)

In 2007, FINRA enacted Rule 2290, which obligates member firms of FINRA to adhere to the following requirements when preparing and issuing fairness opinions:

- Rule 2290(a)(1) requires that when a member firm acts as a financial advisor to any party to a transaction that is the subject of fairness opinion issued by the firm, the member must disclose if the member will receive compensation that is contingent upon the successful completion of the transaction, for rendering the fairness opinion and/or serving as an advisor.

- Rule 2290(a)(2) requires that a member firm disclose if it will receive any other significant payment or compensation that is contingent upon the successful completion of the transaction.

- Rule 2290(a)(3) requires that member firms disclose any material relationships that existed during the past two years or material relationships that are mutually understood to be contemplated in which any compensation was received or is intended to be received as a result of the relationship between the member and any party to the transaction that is the subject of the fairness opinion.

- Rule 2290(a)(4) requires that members disclose if any information that formed a substantial basis for the fairness opinion that was supplied to the member by the company requesting the opinion concerning the companies that are parties to the transaction has been independently verified by the member, and if so, a description of the information or categories of information that were verified.

- Rule 2290(a)(5) requires member disclosure of whether or not the fairness opinion was approved or issued by a fairness committee.

- Rule 2290(a)(6) requires member firms to disclose whether or not the fairness opinion expresses an opinion about the fairness of the amount or nature of the compensation from the transaction underlying the fairness opinion, to the company's officers, directors or employees, or class of such persons, relative to the compensation to the public shareholders of the company.

- Rule 2290(b)(1) requires that any member issuing a fairness opinion must have written procedures for approval of a fairness opinion by the member.[9]

These rules were passed in an effort to assure that fairness opinions are objective and independent.

8 "Solly and Smith Barney Evaluate Themselves; Tell Shareholders they don't need a fairness opinion," by Jed Horowitz, Investment Dealer's Digest, November 3, 1997, p. 5.
9 SR-NASD 2005 080.

When is a Fairness Opinion Appropriate?

Fairness Opinions are an effective risk management tool. Lawyers, accountants, consultants, and the other advisors must stress the importance of the fairness opinion as a shield against shareholder dissension. Particularly in change-of-control transactions, a fairness opinion increases the probability that the Directors' decision will be protected by the business judgment rule. An independent fairness opinion may also help to encourage shareholders to approve the proposed transaction.[10]

Public v. Private

Public companies traditionally derived the greatest benefit from fairness opinions. There is often a diverse group of shareholders, posing the risk of class action suits, as well as several outside Directors aware of their fiduciary responsibilities. Increasingly, however, owners and directors of private companies also seek fairness opinions in the course of significant transactions.

Private companies often have complex capital structures and different classes of ownership.[11] Such diversity of interests highlights any family ownership issues among large numbers of shareholders.[12] Any dissenting minority shareholder group poses a risk to the success of a transaction. The value of a fairness opinion from an independent financial advisor is particularly clear to the Board of Directors of a private company. Boards of Directors of private companies often have little, if any, outside representation. A fairness opinion from an independent advisor introduces an objective perspective that is free of conflicts of interest.

Buyers v. Sellers

Both the buyer and the seller in a transaction benefit from a fairness opinion, especially if shareholder approval is required. Selling companies should secure fairness opinions early in the process in order to allow sufficient time for superior bids to be presented by outside parties.[13]

According to the National Law Journal:[14]

> "In virtually every significant transaction, the Board of Directors of the selling company will request at least one investment banking firm to confirm that the price to be paid is fair from a financial point of view. The acquiring company's board usually will ask its financial advisors to provide similar confirmation."
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> "In general, if the acquisition requires shareholder approval, involves the purchase of a significant amount of assets outside the ordinary course of business or will have a major impact on the way the acquiring company does business, a fairness opinion should be obtained [by the acquiring company]."
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> "In general, a selling company that is public should forego an opinion only when it is selling a small amount of assets or a minor subsidiary. It should obtain an opinion when the transaction will result in a change of control, is a merger or asset sale that will require shareholder approval, or involves the disposition of a major operating division....The directors' exposure to fiduciary duty and corporate waste claims in these cases is significant."

Types of Transactions

The fiduciary duty of a company's Board of Directors falls under intense scrutiny in the course of a change-of-control transaction. "The fairness opinion provides an objective standard against which a company's directors, shareholders and other interested parties can evaluate proposals such as tender offers (including leveraged buyouts and going private transactions), purchases of

10 "Fairness Opinion Issues: Anything but Routine" The National Law Journal April 15, 1996, p. C13.
11 "Fairness Opinions: Do they matter to you?" by Jeffrey M. Gordon, Accounting Today, July 26, 1999, pp.29-30
12 "Can Your Deal's Fairness Opinion Stand the Heat?" by Chester A. Gougis, Mergers & Acquisitions, March/April 1992, pp.33-36.
13 "A Question of Fairness," Mergers & Acquisitions, March-April 1992, p. 34.
14 "Fairness Opinion Issues: Anything but Routine," The National Law Journal, April 15, 1996, p. C13.

blocks of securities, mergers (particularly cash-out mergers) and potentially hostile takeovers."[15] Minority shareholders also rely on fairness opinions in the course of asset sales, subsidiary spin-offs and joint ventures.

"Fairness opinions also are used by other fiduciaries who have the responsibility to protect their group's interests. Because of the nature of a fiduciary's responsibilities, as well as exposure to potential liabilities, a fiduciary will want an outside expert to confirm his or her own judgment. For example, fairness opinions are used to advise ESOP trustees on their responsibility in voting ESOP shares for or against transactions that affect the ESOP, which may have different interests than the shareholder group as a whole."

Management Buyouts

The fairness opinion becomes indispensable in the event of a management buyout. Management self-dealing is inevitable here, as management directly benefits from a lower valuation and is disadvantaged by a higher valuation. It is clear that the interests of management are often contrary to those of shareholders. "Managers are responsible for managing the corporation to maximize the value of stockholders' investment and provide them with the highest return possible. These same managers take on a very different role when they are required to present an offer to stockholders to buy the company. This was the case when the management of RJR Nabisco presented an offer to stockholders to take Nabisco private in a management buyout. This offer was quickly superseded by a competing offer from Kohlberg, Kravis and Roberts as well as other responding offers from management.[16] If management truly attempts to maximize the value of stockholders' investments, why does it choose to advocate an offer that it knows is clearly not in the stockholders' best interest? Many believe that managers cannot serve this dual, and sometimes conflicting, role as agent for both the buyer and the seller."[17] The management buyout is certainly the textbook example of the utility of fairness opinions.

SEC Rule 13E-3

As an amendment to the Securities and Exchange Act of 1934, Rule 13E-3 governs share repurchases in going-private transactions. The amendment attempts to regulate some of the conflicts of interest facing management in management buyout situations. Specifically, the rule applies to share repurchases by public companies resulting in (1) withdrawal of listing on public stock exchanges; (2) withdrawal of quotation in an inter- dealer quotation system; or (3) fewer than 300 shareholders. If one of these conditions is met, Rule 13E-3 requires that the firm going private file a Schedule 13E-3 (Going private transaction by certain issuers).

Schedule 13E-3 requires disclosure of the following information:[18]

- Offers by unaffiliated parties within the previous 18 months;
- Alternatives to the MBO that were considered;
- The positions of the outside directors;
- Detailed discussion of the fairness of the transaction, and
- Inclusion of any fairness opinion.

The Special Committee

It is common practice for a Board of Directors to establish a special committee of disinterested Directors to negotiate transactions, especially complex transactions, on behalf of minority shareholders. Members of the committee must be independent and not in a position to profit from the proposed transaction. "Suggestive language in the Delaware cases has caused the special committee device to become de rigeur [sic]. The establishment of the committee in the first instance is an indication that the promoters of

15 "Fair is Fair: Obtaining a fairness opinion," by Jay Cooke, Texas Bar Journal, January 1988, pp. 28-29.
16 See Barbarians at the Gate: The Fall of RJR Nabisco, Bryan Burrough and John Helyar, New York, Harper & Row (1990).
17 Mergers, Acquisitions and Corporate Restructurings, Patrick A. Gaughan, p. 289.
18 Ibid, p. 291.

the deal are prepared to honor the requirement of procedural fairness. Moreover, the proceedings of the committee, if they are thorough, are designed to satisfy a reviewing court [that] the transaction is fair as a matter of substance. The current assumption is that, given special committee approval (and no other flaws in the procedures), the burden on the issue of fairness shifts to the grievant."[19] Furthermore, "although a Board is not legally required to use a special committee to negotiate an interested transaction, the Court of Chancery recently observed that the failure to use a special committee or other procedural safeguard 'evidences the absence of fair dealing.'"[20]

The true purpose of appointing an independent special committee is to mitigate the risks of future litigation. "The special committee must understand that its function is to negotiate both independently and, to the extent possible, as if at arm's length."[21] Among the responsibilities of the autonomous special committee is the role of selecting independent financial and legal advisors. The special committee often retains "an outside valuation firm, such as an investment bank or a firm specializing in valuations, to evaluate the transaction's terms and price. This firm may then render a fairness opinion in which it may state that the offer is in a range that it determines to be accurate."[22]

The Range of Financial Fairness

A fairness opinion determines a range of values within which a proposed transaction is fair, impartial and just to all interested parties, including minority shareholders. A fairly priced transaction should fall within this range. Selling shareholders may prefer to transact at the high end of the range while the acquiring party may prefer the low end of the range. "Fairness opinions, however, are judgments, not statements of fact or prophecy."[23]

The Business Judgment Rule

This evidently self-explanatory phrase invokes complex legal implications. "Derived from more than 150 years of court decisions, the rule varies from state to state but generally holds that executives are not liable for decisions that are made in good faith, on an informed basis and in the belief that the action taken was in the best interest of the company" and its shareholders.[24] "The business judgment rule, as its name implies, protects corporate directors from liability for actions or omissions within the sphere of their business judgment. According to one commentary, the judicially constructed rule entails five elements: 'a business decision,' 'disinterestedness,' 'due care,' 'good faith,' and 'no abuse of discretion.'"[25] 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 employment of independent investment bankers serves the dual role of facilitating the decision-making process and providing evidence that the Board complied with the business judgment rule. "The fairness opinion has become a universally accepted instrument that is used to effectively prove such compliance."[26] The acquisition of a fairness opinion defends the Board's decision from litigation and limits the extent to which controversial decisions may be legally challenged.

Case Law

The omnipresent threat of litigation emphasizes the utility of fairness opinions in protecting directors from legal liability and in providing evidence that fiduciaries, in acting in the best interest of shareholders, may take shelter under the business judgment rule. Most state corporate statutes entitle directors to rely on the advice of independent experts selected with good faith and

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19 Corporate Restructurings, Reorganizations, and Buyouts, Joseph W. Bartlett, New York, Wiley (1991), § 8.2 (e).
20 "Special Negotiating Committees," by Sparks and Hurd, The Review of Securities & Commodities Regulation, April 27, 1997
21 Ibid.
22 Mergers, Acquisitions and Corporate Restructurings, Patrick A. Gaughan, pp. 11-12.
23 "A New Cloud over Wall Street?" by Arthur Fleischer, The New York Times, June 8, 1986, Sec. 3, p.2, col. 3.
24 "Business and the Law: A favored Shield in S. & L. Cases" by Stephen Labaton, The New York Times, August 20, 1990, Sec. D, p. 2, col. 1.
25 Corporate Restructurings, Reorganizations, and Buyouts, Joseph W. Bartlett, New York, Wiley (1991), § 8.2(a) footnote 33.
26 Fairness Opinions: Do They Matter to You?" by Jeffrey M. Gordon, Accounting Today, July 26, 1999, pp. 29-30.

reasonable care.[27] Although not explicitly required by law, the Securities and Exchange Commission often requests fairness opinions when reviewing proxy materials.[28]

Two seminal cases establish legal precedent against which the fiduciary responsibility of directors may be judged. According to Mergers & Acquisitions:[29]

"The case law suggests that directors facing a takeover or buyout bid need to:

- Establish a clear record of consideration of fairness;
- Obtain a fairness opinion;
- Ensure that the opinion is sufficiently thorough and extensive; and
- Negotiate terms and price and, in certain circumstances, seek other bidders."

Smith v. Van Gorkom

In January 1985 the Delaware Supreme Court ruled against the directors of the Trans Union Corporation in Smith v. Van Gorkom. Directors were held personally liable for approving the sale of the company in a leveraged buyout. Although the buyout price significantly exceeded the current market price (reportedly an all cash bid at an almost 50% premium[30]), the court found that directors, who relied on Chairman Van Gorkom's valuation of the transaction, "'lacked valuation information adequate to reach an informed business judgment.'"[31] No independent fairness opinion was acquired. The Supreme Court of Delaware ruled that Directors of Trans Union were "grossly negligent" and stated that "market value was not the best measure of value and that 'intrinsic' value should have been calculated."[32] "The court opened a safe-harbor by implying that the liability could have been avoided had the directors elicited a fairness opinion from anyone in a position to know the company's value."[33]

Weinberger v. UOP, Inc.

Weinberger v. UOP, Inc. broached the issue of fairness opinions from a different perspective. Decided by the Delaware Supreme Court in 1983, the case involved a "squeeze-out" merger, "a transaction that resulted in the forced termination of equity ownership for many minority shareholders. Interestingly, the directors had obtained a fairness opinion, but it was discovered to be a cursory opinion provided over the weekend by the company's investment bank (which was also receiving significant fees in the transaction."[34] The court focused on the haste in which the fairness opinion was prepared and the apparent lack of independence of the opinion's issuer.

"The Delaware Supreme Court's seminal opinion in Weinberger v. UOP, Inc. introduced the 'entire fairness' standard to the world of corporate restructurings. The Weinberger decision conjugated a two-pronged test against which such 'interested party' transactions would be judged—fairness in a substantive sense, meaning a fair price to the minority, and procedural fairness or fair dealing, meaning that the transaction proceeds fairly; an inside transaction must pass both thresholds in order to admit the board to the desired safe-harbor—the defense that its judgment is insulated from legal attach by the 'business judgment' rule. The bulk of the case law post Weinberger has involved the question of fair procedure."[35]

27 "Fairness Opinion Issues: Anything but Routine" The National Law Journal April 15, 1996, p. C13.
28 "Alter Egos: Why 3Com and Convergent Broke Up," by William M. Alpert, Barron's.
29 "Can Your Deal's Fairness Opinion Stand the Heat?" by Chester A. Gougis, Mergers & Acquisitions, March/April 1992, pp. 33-36
30 "The Defendant's Side of the Trans Union Case," by J.W. Van Gorkom, Mergers & Acquisitions, v22n4. January/February 1988, pp. 52-54.
31 "Focus on Corporate Boards: Directors Feel the Legal Heat," by Robin Schatz, The New York Times, December 15, 1985, Sec. 3, p.12, col. 3.
32 "The Defendant's Side of the Trans Union Case," by J.W. Van Gorkom, Mergers & Acquisitions, v22n4. January/February 1988, pp. 52-54.
33 "Who Says it's a Fair Deal?" by Paul Sweeney, Journal of Accountancy, August 1999, pp. 44-51.
34 "Can Your Deal's Fairness Opinion Stand the Heat?" by Chester A. Gougis, Mergers & Acquisitions, March/April 1992, pp. 33-36.
35 Corporate Restructurings, Reorganizations, and Buyouts, Joseph W. Bartlett, New York, Wiley (1991) § 8.2(a) footnote 33.

In re New York Stock Exchange / Archipelago Merger Litigation

In In re New York Stock Exchange / Archipelago Merger Litigation, the Court looked at the independence of the financial advisors.[36] In the fall of 2004, Goldman, Sachs & Co. ("Goldman") along with other investment banks first suggested a deal with Archipelago Holdings, Inc. ("Archipelago").[37] At the time of the contemplated merger, the NYSE's CEO was a former executive of Goldman.[38] Goldman was to act as a facilitator of the deal, receiving fees from both NYSE and Archipelago.[39] Goldman recommended the investment bank that wrote the first fairness opinion.[40]

Certain NYSE seat holders filed a complaint alleging breach of fiduciary duty of loyalty and care, as well as aiding and abetting a breach of fiduciary duty by Goldman.[41] A settlement was reached requiring a second fairness opinion; however the independence of this firm was also called into question.[42] Finally, a third party performed a report regarding the fairness of the transaction and their opinion was deemed truly independent by the Court and a vote by seat holders of the NYSE was allowed to go on as scheduled regarding the contemplated merger.[43] The Court held shareholders cannot make a fully informed decision based upon the fairness opinion of a third party, where conflicts of interest exist.[44]

Other Important Case Law

- DFC Glob. Corp. v. Muirfield Value Partners L.P., 518, 2016, 2017 WL 3261190 (Del. Aug. 1, 2017): The Supreme Court of Delaware reversed and remanded the chancery court's determination of the fair value of DFC Stock.

- In re MeadWestvaco Stockholders Litig. (2017): The court granted the defendants' motion to dismiss, holding that the board did not demonstrate intentional disregard to fiduciary duties.

- ACP Master, Ltd. v. Sprint Corp., Nos. 8508-VCL, 9042-VCL, 2017 Del. Ch. LEXIS 125 (Ch. July 21, 2017): The court found no breach of fiduciary duty under entire fairness review.

- Buttonwood Tree Value Partners, Ltd. P'ship v. R. L. Polk & Co., No. 9250-VCG, 2017 Del. Ch. LEXIS 126 (Ch. July 24, 2017): Chancery court declined to dismiss fiduciary duty claims arising from a self-tender offer.

- Williams v. Ji, No. CV 12729-VCMR, 2017 WL 2799156 (Del. Ch. June 28, 2017): Chancery court denied motion to dismiss breach of fiduciary duty claims involving option grants to directors.

- Cement Masons Local 780 Pension Fund v. Schleifer, No. 654453/2015, 2017 WL 2855101 (N.Y. Sup. Ct. June 28, 2017): The court held that the entire fairness standard applied and the defendants had to prove that excessive compensation was fair to the stockholders.

- Morris v. Spectra Energy Partners (De) GP, LP, No. CV 12110-VCG, 2017 WL 2774559 (Del. Ch. June 27, 2017): The court denied motion to dismiss claims alleging that Sep GP breached its contractual duty of good faith.

- Sciabacucchi v. Liberty Broadband Corp., No. CV 11418-VCG, 2017 WL 2352152 (Del. Ch. May 31, 2017): Stockholder vote approving issuances and grant of voting proxy ruled structurally coerced.

- In re SWS Grp., Inc., No. CV 10554-VCG, 2017 WL 2334852 (Del. Ch. May 30, 2017): The court determined the fair value to be $6.38 per share, mostly due to the synergies driven transaction.

36 In re New York Stock Exchange / Archipelago Merger Litigation, 824 N.Y.S.2d 764 (N.Y. Sup., 2005).
37 Ibid, p. 3
38 Ibid, p. 2
39 Ibid, p. 4
40 Ibid, p. 3
41 Ibid, p. 6
42 Ibid, p. 7
43 Ibid.
44 Ibid, p. 14

- In re PetSmart, Inc., No. CV 10782-VCS, 2017 WL 2303599 (Del. Ch. May 26, 2017): The deal price was the best indicator of the fair value of PetSmart's shares.

- In re Saba Software, Inc. Stockholder Litig., No. CV 10697-VCS, 2017 WL 1201108 (Del. Ch. Mar. 31, 2017): The court held that the plaintiff pled sufficient facts alleging that a stockholder vote approving a merger was neither fully informed nor uncoerced.

Why a Houlihan Fairness Opinion?

- A Houlihan Fairness Opinion is factually supported and analytically complete.
- A Houlihan Fairness Opinion is documented by comprehensive analyses and this may effectively discourage a challenge by dissenting shareholders.
- A Houlihan Fairness Opinion is valuable to all interested parties in that they may obtain information to prevent an inferior deal or support more equitable terms.
- Houlihan is strictly objective, neutral, and free from conflicts of interest.
- Houlihan understands the time sensitivity of corporate finance/transaction opinions and responds promptly to opportunities at reasonable rates.
- Houlihan has a professional and experienced Valuation and Financial Advisory group with the time, credentials, and resources to meet stakeholder deadlines.
- Houlihan is highly experienced with complex merger & acquisition transactions and has experience in virtually every conceivable business combination and change of control.
- Houlihan offers extensive experience in working with small- to mid-cap companies including significant experience in working with micro-cap publicly traded companies.
- Houlihan understands the underlying economics of diverse industry groups.
- Relative to potentially multi-million dollar litigation, the fee for a Houlihan Fairness Opinion is competitive, reasonable, and fair.
- Transactions including tender offers, mergers, asset sales, and leveraged buyouts effectively advertise that a company is put in play. Minority stockholders rely on the objectivity and integrity of a Houlihan Fairness Opinion, as well as our recognition that the market will benchmark the accuracy of our conclusions.

Value. Added.

Houlihan Capital is a leading, solutions-driven, valuation, financial advisory and investment banking firm committed to delivering superior client value and thought leadership in an ever-changing landscape. The firm has extensive experience in providing objective, independent and defensible fairness opinions and other opinions of value that meet accounting and regulatory requirements. Our clients include some of the largest asset managers around the world, and '40 Act funds, private equity funds, hedge fund advisors, fund administrators, and other asset management firms benefit from Houlihan Capital's comprehensive valuation and financial advisory services. Houlihan Capital is SOC-compliant, a Financial Industry Regulatory Authority (FINRA) and SIPC member, and committed to the highest levels of professional ethics and standards.

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