

December 15, 2017

Delaware Supreme Court Again Speaks to Market Evidence in Appraisal: *Dell*

The Delaware Supreme Court yesterday issued its decision in the “long-running appraisal saga” arising out of Dell’s 2013 go-private transaction, reversing the ruling below and reaffirming the primacy of market evidence in determining fair value. [*Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd.*, No. 565, 2016 \(Del. Dec. 14, 2017\) \(*en banc*\)](#).

Although the management-led Dell buyout resulted from a process the trial court acknowledged was robust, open, and offered stockholders a 37% premium over the trailing 90-day average stock price, the [Court of Chancery’s post-trial ruling](#) appraised the company’s value almost four dollars over and nearly 30% higher than the merger consideration. In so doing, the trial court relied exclusively on its own discounted cash flow valuation model, giving no weight to the market evidence. The trial court rejected such evidence because it believed there was a “valuation gap” between Dell’s market value and its intrinsic value due to “investor myopia”; because it found that Dell’s process focused on financial, rather than strategic, bidders driven by desired internal rates of return; and because it considered management-led buyouts to suffer from “problems” that undermine the reliability of the merger price.

Writing for the unanimous Court, Justice Valihura rejected the trial court’s bases for disregarding market evidence. The Court noted that “the efficient market hypothesis” has been “long endorsed” by Delaware law and counsels that “the price produced by an efficient market” like the market for the widely held Dell stock “is generally a more reliable assessment of fair value” than the findings of “an expert witness who caters her valuation to the litigation imperatives of a well-heeled client.” Echoing its recent ruling in the [DFC appraisal](#), the Court again dismissed the concept of a “private equity carve out” for market evidence, holding that the trial court misinterpreted the import of the lack of strategic bidder participation in Dell’s sales process and, thus, “ignored an important reality: if a company is one that no strategic buyer is interested in buying, it does not suggest a higher value, but a lower one.” And, although the Court recognized that there could be aspects of an MBO that might undermine the reliability of the deal price, the process that Dell followed—and the exemplary conduct of Michael Dell in particular—ameliorated any concerns.

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The Court concluded that “the market-based indicators of value—both Dell’s stock price and deal price—have substantial probative value” at least as to publicly listed stocks that trade in liquid markets. Accordingly, the Court observed that the Court of Chancery’s exclusive reliance on a DCF valuation that priced the company at billions of dollars more than anyone was willing to pay “was the antithesis of any economist’s definition of fair market value.” The Court cautioned: “When an asset has few, or *no*, buyers at the price selected, that is not a sign that the asset is stronger than believed—it is a sign that it is weaker.” And the Court noted that this “should give pause to law-trained judges who might attempt to outguess all of these interested economic players with an actual stake in a company’s future.” Consequently, the Supreme Court remanded the case to the Court of Chancery with the express “discretion on remand to enter judgment at the deal price” and “with no further proceedings.”

The *Dell* and *DFC* opinions emphatically affirm that market-based evidence not only matters in appraisals but should often be dispositive.

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