

## Corporate Finance/M&A - USA

### Court rules on failure to include management presentations in proxy statement

Contributed by **Ropes & Gray LLP**

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#### Introduction

#### Facts

#### Decision

#### Introduction

In *Dent v Ramtron*<sup>(1)</sup> Delaware Court of Chancery Vice Chancellor Parsons dismissed a claim that a target's board breached its duty of candour by failing to disclose to stockholders internal management projections that the target company's financial adviser relied on in valuing the company. The case follows in a long line from the Delaware Court of Chancery's 2007 decision in *In Re Netsmart Technologies, Inc Shareholders Litigation*, which focused the plaintiffs' attention on management projections in making claims of inadequate disclosures. *Dent* further shows that claims seeking disclosure of certain projections will require plaintiffs to allege, in a fact-intensive way, why the particular information sought is important to a stockholder's decision-making process and would alter the overall mix of available information.

#### Facts

Ramtron International Corporation received an unsolicited offer from Cypress Semiconductor Corporation in Spring 2011 to purchase Ramtron for \$3.01 a share (a 27% premium at the time). The board rebuffed Cypress's initial offer as inadequate and no further advances were made by Cypress for more than a year. Cypress showed renewed interest in Summer 2012, offering to buy Ramtron for a reduced price and threatening to conduct a hostile acquisition if the two companies failed to agree to terms. Ramtron eventually agreed to a sale at \$3.10 a share. With support from the Ramtron board of directors, Cypress acquired 78% of Ramtron's shares via tender offer. Unable to complete the transaction via short-form merger, Cypress proceeded with a long-form merger and scheduled a stockholder vote to approve the transaction.

The definitive proxy statement contained a summary of four financial analyses performed by Needham & Company, including a discounted cash flow (DCF) analysis, which was prepared based on the management's projections. Although the projections were relied on by Needham in preparing its DCF analysis, they were not disclosed in the proxy. Ramtron stockholders approved the merger in November 2012.

#### Decision

The court first noted that there is no duty *per se* under Delaware law to disclose management projections relied on by financial advisers in preparing their analysis, because the question of materiality is context-specific.

The court also distinguished the case from *Netsmart*. Unlike that case, the Ramtron stockholders did not have to weigh the costs and benefits of selling their shares against maintaining their holdings in a going concern. Cypress had already acquired a majority of interest in Ramtron, guaranteeing a vote approving the merger. The only real decision before the stockholders was whether to accept the merger consideration or seek appraisal.

The court focused on the plaintiffs' failure to plead how disclosure of the management's projections would significantly alter the total mix of information available to Ramtron's stockholders. The proxy statement disclosed Needham's DCF analysis as well as the fact that such analysis was based on the Ramtron management's projections. A reasonable stockholder could have determined from the information disclosed in the proxy statement that the transaction consideration paid by Cypress was lower than Ramtron's estimate of its future earning potential.

For further information on this topic please contact [Peter L Welsh](mailto:peter.welsh@ropesgray.com), [Christian J Westra](mailto:christian.westra@ropesgray.com) or [Sarah Dunn Davis](mailto:sarah.davis@ropesgray.com) at Ropes & Gray LLP by telephone (+1 617 951 7000), fax (+1 617 951 7050) or email ([peter.welsh@ropesgray.com](mailto:peter.welsh@ropesgray.com), [christian.westra@ropesgray.com](mailto:christian.westra@ropesgray.com) or [sarah.davis@ropesgray.com](mailto:sarah.davis@ropesgray.com)). The Ropes & Gray LLP website can be accessed at

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## Endnotes

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