

Court again rejects transaction price as best measure of fair value

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On July 8 2016 the Delaware Court of Chancery released its post-trial opinion in an appraisal action that arose from the sale of DFC Global Corporation, an international non-bank provider of alternative financial services, to private equity buyer Lone Star Fund VIII (US), LP.⁽¹⁾ Despite acknowledging that the parties arrived at the sale price after a lengthy process involving multiple interested parties, and that the Delaware Court of Chancery "frequently defers to a transaction process that was the product of an arm's-length process and a robust bidding environment", Chancellor Bouchard found that the transaction price is "reliable only when the market conditions leading to the transaction are conducive to achieving a fair price".

After rejecting sale price as an equivalent of fair value, the court employed a three-pronged valuation model to reach its determination as to the appropriate per share value of the company:

- Taking into account elements of both parties' positions with respect to the inputs to the discounted cash-flow model, the court used a discounted cash-flow analysis to derive a value of \$13.07 per share at the time of DFC's sale.
- The court focused on the multiples-based comparable company analysis proposed by DFC's expert, which looked to a peer group of similar companies and resulted in a valuation of \$8.07 per share.
- The court considered the transaction price of \$9.50 per share.

Weighing each prong equally, Bouchard arrived at a valuation of \$10.21 per share at the time of the transaction, an approximately 7.5% premium over the deal price. Because only four stockholders, holding approximately 4.6 million shares, sought appraisal, this resulted in an increase to the transaction consideration of only \$3.3 million in the aggregate.

The *DFC* opinion builds on Vice Chancellor Laster's May 2016 appraisal rights decision in *Dell*, which found that the deal price is not necessarily determinative for ascertaining fair value in certain situations where there was a robust bidding process (for further details please see "[Delaware Court of Chancery rejects transaction price as best measure of fair value](#)"). However, rather than concluding that these decisions are indicative of a sea change in Delaware's recent tendency to defer to the transaction price resulting from an arm's-length process in an appraisal action, it is likely that these decisions were the result of the specific facts and circumstances surrounding the relevant transactions.

In *Dell* the market's "myopic" valuation of Dell and its management's long-term assessment of the company raised concerns that the transaction price was artificially low and resulted from asymmetric information. Mr Dell's role in the buy-out also raised concerns about conflicts of interest and fairness. In *DFC* the court found that transaction price is informative of fair value only when it is the product of not only a fair sale process, but also of a well-functioning market. The *DFC* court found that while transaction price could fairly be used as one measure of value because the transaction did not involve potential conflicts of interest inherent to a management buy-out or negotiations to retain existing management, it could not be relied on as the only measure because significant company turmoil and regulatory uncertainty around the time of the transaction raised doubts about the fairness of the arm's-length transaction price, as well as concerns regarding the financial projections provided by DFC's management.

AUTHORS

[John Sorkin](#)



[Michael Pilo](#)



For further information on this topic please contact [John Sorkin](#) or [Michael Pilo](#) at Ropes & Gray LLP by telephone (+1 212 596 9000) or email (john.sorkin@ropesgray.com or michael.pilo@ropesgray.com). The Ropes & Gray LLP website can be accessed at www.ropesgray.com.

Endnotes

(1) *In re: Appraisal of DFC Global Corp*, CA 10107-CB (Del Ch July 8 2016).

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