

## ■ MERGERS AND ACQUISITIONS

# Management Optimism Versus Market Skepticism in Delaware Appraisal Litigation: A *Dell* Case Study

*The authors previously have argued that there may be reason to question the reliability of sell-side management projections. This issue is raised again by the Dell MBO and ensuing appraisal litigation, where management projections potentially painted an optimistic view of the company. Encouragingly, the Delaware Supreme Court appears willing to question the centrality of management projections in appraisal litigation—particularly when a public company is sold in a robust, independent, and competitive sale process.*

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When a publicly traded company announces that it is being acquired, management generally will disclose projections of the company's future performance in its deal proxy. Those projections often present an optimistic view of the company's prospects—perhaps even suggesting a valuation higher than the deal price. And, not infrequently, appraisal litigation ensues. The Delaware Court of Chancery must then determine the fair value of the company and must decide which constitutes better evidence of the company's fair value—the market-based data (*i.e.*, the deal price), or a valuation based on management's forecasts.

We previously have argued that anecdotal evidence suggests that there are real potential biases inherent in the latter approach. In particular, management forecasts are likely to reflect an upward bias and may therefore serve as an unreliable basis for valuation.<sup>1</sup> Thus, if a public company is acquired in a clean and competitive process,

there is good reason for appraisal courts to give significant weight to the deal price produced by that process, and to be mindful of management's likely optimism when rendering its fair value determination.<sup>2</sup>

The effects of management optimism on public company projections are neatly illustrated by the recent *Dell* appraisal litigation. In 2013, Dell Inc. was taken private in a management buyout (MBO), which paid stockholders \$13.75 per share. A number of dissenting shareholders sought appraisal in the Court of Chancery. Although the Court of Chancery ultimately determined that the sale was unmarred by any wrongdoing or any breaches of fiduciary duty, it concluded that the deal price was not the most persuasive evidence of the company's fair value.<sup>3</sup> Instead, the Court of Chancery chose to rely on a discounted cash flow (DCF) valuation based on two sets of projections—one of which (as the Court of Chancery expressly noted) the company failed to meet,<sup>4</sup> the other of which the Court characterized as “somewhat optimistic”—and determined that the fair value of Dell was \$17.62 per share.<sup>5</sup> Dell appealed to the Delaware Supreme Court, which unanimously held that the Court of Chancery's valuation constituted an abuse of discretion.<sup>6</sup>

In doing so, the Delaware Supreme Court made clear that the Court of Chancery's choice to give no weight to the deal price could not be sustained, in light of its specific factual findings that the deal price was produced by a reliable and untainted sale process. As such, the *Dell* case is a strong expression of support for treating the deal price—particularly in public company deals—as reliable evidence of fair value when the Court of Chancery examines the sale process and finds that it is adequate.

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At the same time, the Delaware Supreme Court's holding is animated by a significant philosophical point that should not escape notice: the differences between the Delaware Supreme Court's and the Court of Chancery's respective *Dell* opinions suggests that the fundamental question is whether to weigh the views of management over those of an efficient market when the two diverge as to what a company is really worth. And, the Delaware Supreme Court has weighed in firmly in favor of the latter. Implicit in its decision is a concern that management may be an *unreliable* arbiter of the company's fair value. Further, the Delaware Supreme Court's decision implicitly questions the ability of courts to reliably account for management's biases to yield a fair value determination that is more reliable than market-based evidence.

Accordingly, *Dell* suggests that, when a public company is sold in a reliable and clean process, courts should be hesitant to supplant the market's determination with a valuation based on management's projections. As detailed below, a close comparison of Dell's *ex ante* projections with the company's actual performance suggests—consistent with our anecdotal findings—that management's forecasts were indeed overly optimistic. In short, the *Dell* litigation offers an excellent case study into the risks of relying on management forecasts when appraising a public company.

## The Dell MBO

The *Dell* appraisal litigation arose from the 2013 management buyout of Dell, led by Michael Dell and Silver Lake Partners. The acquirers took Dell private in a transaction that paid shareholders \$13.75 per share, a nearly 40 percent premium over the unaffected stock price. The deal was announced on February 5, 2013, and—under the terms of the merger agreement—allowed for a forty-five day go-shop period. During that period, more than sixty potential financial and strategic bidders were contacted. Importantly, Michael Dell pledged to

cooperate with other bidders and offered to vote his shares in favor of the highest offer. Yet no topping bid emerged.

Against the \$13.75 per share deal price, however, were five sets of sell-side forecasts that were disclosed in the deal proxy, which was filed on March 29, 2013. These included two sets of projections prepared by Dell management right around the time that the sale process began; one was first presented in July 2012 (July Plan) and the other in September 2012 (September Case). Additionally, the deal proxy disclosed three cases that were prepared in early 2013 by the Boston Consulting Group (BCG).<sup>7</sup> The first—the BCG Base Case—was more “pessimistic” than the September case; the remaining two cases addressed the likelihood that Dell would achieve some portion of \$3.3 billion in potential cost savings that management had identified: “one assumed that [Dell] would realize 25 percent of the savings” (BCG 25% Case), and another “assumed that [Dell] would realize 75 percent of the savings” (BCG 75% Case).<sup>8</sup> And, beyond the five sets of projections disclosed in the deal proxy, in September 2013, Silver Lake and Michael Dell presented a set of forecasts to the banks who were financing the MBO (Bank Case). As discussed below, with few exceptions, these various projections proved to be significantly optimistic.

## The Court of Chancery Litigation

After the deal closed, a number of dissenting shareholders—together holding 38,765,130 shares of Dell—sought appraisal in the Delaware Court of Chancery, pursuant to 8 Del. C. § 262.<sup>9</sup> Trial was held before Vice Chancellor J. Travis Laster, where the parties advanced their respective valuation positions. Petitioners argued—based on a DCF analysis—that the company was worth more than double the deal price, \$28.61 per share, and that the deal undervalued the company by approximately \$23 billion. Respondents, in turn, argued that the deal price, \$13.75 per share, was the best evidence of the company's value (although their expert witness

also proffered a DCF valuation showing that the company's fair value was \$12.68 per share on the closing date).

The Court of Chancery found that the sale process “easily would sail through if reviewed under enhanced scrutiny,” that the company “did many praiseworthy things,” and that if a liability proceeding were to occur “this court could not hold that the directors breached their fiduciary duties or that there could be any basis for liability.”<sup>10</sup> And the Court of Chancery determined that the sale process was reliable enough to foreclose the petitioners' twice-deal-price valuation position (although—as will be discussed later—the court did not believe that the sale process was reliable enough to rule out the deal undervalued Dell to a lesser degree), reasoning that “[h]ad a value disparity of that magnitude existed,” surely someone else would have outbid Silver Lake and Michael Dell.<sup>11</sup> Nonetheless, the Court of Chancery concluded that the deal price should not be given any weight in its final fair value determination, as it believed that the sale— notwithstanding the integrity of the process—did not produce a reliable valuation of the company. Among other things, the Court of Chancery believed that there was an inefficient market for Dell, as evinced by a substantial gap between how management valued the company and how the market valued the company. And the Court of Chancery laid the blame for this valuation gap squarely at the feet of the market, arguing that it was a product of such factors as investors' shortsighted focus on near-term results.<sup>12</sup>

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Furthermore, the Court of Chancery believed that— notwithstanding the robust go-shop process—the very nature of an MBO deterred

would-be bidders from making topping bids for the company, seeking to avoid the so-called “winner's curse” (whereby the highest bidder overpays for the company).<sup>13</sup> Specifically, when potential buyers are bidding for an asset, there exists an asymmetry of information between the seller and outside parties. The seller (*i.e.*, management) is presumed to have better knowledge about what the company is worth, as compared to an outside third party.<sup>14</sup> In this case, the would-be acquirer included Dell management. Thus, under a “winner's curse” theory, a value-maximizing strategy could counsel against outbidding management, since third-party bidders would be competing against a party presumed to know more about what the company is worth. That, in turn, deters outside bidders from entering the process in the first place. As the Court of Chancery explained, “[b]efore any bidder would become involved, they had to have a strategy for dealing with [Michael] Dell's superior knowledge.”<sup>15</sup>

By that same token, the Court of Chancery found that Michael Dell's relationship with the company prevented the sale process from generating a reliable valuation of the company. The trial court cited expert testimony showing that, during a three-year period in which Mr. Dell was not at Dell, the company lost more than a billion dollars in market value, but that the company gained \$2.5 billion in market value upon his return. The court also cited evidence that some of Dell's customers valued their relationship with Michael Dell and might have left if he did not remain at the company's helm. This, the court explained, forced would-be bidders to “account for Mr. Dell's value” to the company.<sup>16</sup>

Therefore, the Court of Chancery declined to give any weight to the deal price. Instead, observing that Delaware courts historically have given significant weight to DCF valuations “because it is the approach that merits the greatest confidence within the financial community,” the trial court held that a DCF valuation, based in part on management projections, offered a better and more reliable view of Dell's fair value.<sup>17</sup> The Court of

Chancery specifically used two sets of forecasts as inputs. First, the court deemed reliable the BCG 25% Case. These projections were generated by BCG in January 2013, with input from Dell management; they also had been deemed reliable by Dell's board, BCG, and Dell's banker. However, as the Court of Chancery acknowledged, the projections had, in hindsight, proven to be inaccurately high.<sup>18</sup> Accordingly, the court made some minor modifications to the projections to account for these discrepancies, but still concluded that the BCG 25% Case (as adjusted) was sufficiently reliable to serve, in part, as the basis for a DCF valuation.<sup>19</sup>

Second, the court looked to the so-called "Bank Case," a set of projections made in September 2013 with input from Dell's management and "implicitly approved" by Michael Dell. However, the court recognized that the Bank Case was "relatively optimistic," insofar as it reflected increased margins for Dell's PC business (which was at odds with the Company's stated near-term strategy). As it did with the BCG 25% Case, the court made some minor modifications to the Bank Case.<sup>20</sup>

Based on these two sets of forecast inputs, the Court of Chancery obtained valuations of \$18.81 per share and \$16.43 per share, respectively. And, "[h]aving no reason to prefer one realistic case over the other," the court averaged the two valuations, yielding a fair value of \$17.62 per share, \$3.87 more than the deal price.<sup>21</sup>

## The Delaware Supreme Court's Decision

Following the trial, the parties cross-appealed to the Delaware Supreme Court. Petitioners argued that the Court of Chancery abused its discretion by making downward adjustments to management's projections. Respondent argued that the Court of Chancery erred in failing to give any weight to the deal price. In December 2017, the Delaware Supreme Court unanimously ruled in favor of Dell, holding that the Court of Chancery's decision to give no weight to the deal

price could not be reconciled with its findings about the reliability of the sale process.

The Supreme Court both addressed the Court of Chancery's concerns about the reliability of this specific deal price and explained—more generally—why exclusive reliance on management projections was not supported by the trial record or considerations underpinning Delaware appraisal litigation. It rejected the Court of Chancery's conclusion that there was an inefficient market for Dell. While management and the market disagreed on the worth of the company, the Supreme Court held that it was error to weigh exclusively the views of management over the market. As the Supreme Court explained, the market was fully informed but was skeptical of management's optimistic forecasts—understandably so "especially in the face of management's track record of missing its own projections."<sup>22</sup>

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The Delaware Supreme Court also found unpersuasive the Court of Chancery's concerns about the nature of an MBO and Michael Dell's role in the company. As a general matter, although the Delaware Supreme Court did not dismiss fears of a "winner's curse" out-of-hand, it nonetheless suggested that such fears may be overblown:

If a deal price is at a level where the next upward move by a topping bidder has a material risk of being a self-destructive curse, that suggests the price is already at a level that is fair.<sup>23</sup>

Further, in this case, the court saw no evidence of the "winner's curse" theory deterring any topping bids. Any asymmetry of information was rectified

by the fact that the would-be bidders conducted extensive due diligence and had access to considerable confidential information.<sup>24</sup> Similarly, Michael Dell had pledged to cooperate with the highest bidder.<sup>25</sup> Further, there was evidence showing that market participants did not necessarily place particular value on the participation of Mr. Dell and other incumbent officers in the post-closing entity.<sup>26</sup> Accordingly, the Supreme Court concluded that the stated reasons for giving no weight to the deal price were “flawed” and could not be sustained.<sup>27</sup> But the Supreme Court went further, suggesting that the Court of Chancery did not simply err by giving *no* weight to the deal price, but it also erred in concluding that a DCF valuation was appropriate at all in this case.

Specifically, although the Delaware Supreme Court provided that, on remand, the Court of Chancery could choose to give some weight to a DCF calculation, it strongly discouraged the trial court from doing so.<sup>28</sup> Even though management “worked hard to tell its story over a long time and was the opposite of a standoffish, defensively entrenched target,” and even though management’s projections theoretically implied a value higher than the deal price, the fact remained that not a single market participant considered \$17.62 per share an “attractive” value for Dell.<sup>29</sup> This, the court explained, “is not a sign that an asset is stronger than believed—it is a sign that it is weaker.”<sup>30</sup>

## Potential Implications of the Dell Decision

Viewed simply, the Court of Chancery and Delaware Supreme Court’s divergent views of the Dell transaction could be said to turn on whether management or the market is more likely to produce an accurate valuation of a public company. Although the Court of Chancery identified several deal-specific concerns that led it to doubt the reliability of the deal price, its holding suggested that—for purposes of appraisal—courts should defer to the views of management, rather than the

market. For example, the Court of Chancery took the view that gaps in valuation between management’s views and the market may be the result of the market’s failure to appreciate the company’s prospects—not management’s overvaluing of the company.<sup>31</sup> Likewise, the Court of Chancery suggested that even if management’s forecasts prove in hindsight to have been overly optimistic, a court can nonetheless make adjustments to those projections to make them more reliable going forward.<sup>32</sup> In short, the Court of Chancery’s holding tacitly suggests that—in many circumstances—when management and the market disagree about a company’s value, management’s views should prevail.

The Delaware Supreme Court disagreed. It made clear that when the Court of Chancery finds that a public company has been sold in a clean, competitive process, there must be compelling reasons to completely reject the market-based evidence of the company’s fair value (in the form of a premium deal price).<sup>33</sup> Of course, by statute, the Court of Chancery must consider “all relevant factors” in determining a company’s fair value.<sup>34</sup> Thus, it cannot—for example—automatically treat the deal price as presumptively the best evidence of a company’s fair value, or fail to at least consider other methods of valuation.<sup>35</sup> Indeed, as the Delaware Supreme Court explained, it might be appropriate to rely on DCF-based approaches to valuation in a situation where “there is reason to suspect that market forces cannot be relied upon to ensure fair treatment of the minority” shareholders.<sup>36</sup> According to the Supreme Court, however, *Dell* was not one of those cases.

The Supreme Court repeatedly expressed skepticism of weighing the optimistic views of management over those of the market, particularly insofar as the Court of Chancery arrived at a valuation that was significantly above the deal price.<sup>37</sup> Indeed, the Supreme Court stated that there were “legitimate questions about the reliability of the projections upon which all of the various DCF analyses are based,”<sup>38</sup> which further counseled against reliance on a DCF valuation. This observation is all the more

noteworthy in light of the fact that the Delaware Supreme Court *affirmed* the Court of Chancery's decision to make some downward adjustments to the BCG 25% Case projections, to account for an anticipated decline in PC sales.<sup>39</sup> In other words, even though the Court of Chancery attempted to account for and offset the optimism embedded in management's forecasts, the Supreme Court was skeptical of the decision to rely on management's forecasts at all, given the availability of a deal price produced by a competitive and clean sale process. The Supreme Court's opinion suggests endorsement of the view that management projections may be unreliably optimistic and that judicially driven adjustments to correct for such optimism may be insufficient.

### Re-Testing the Reliability of Management Projections: *Dell* as a Case Study

Close examination of Dell's financials indicates that this was indeed a case where reliance on management projections was not likely to produce an accurate valuation of the company given management's overly optimistic view relative to how the company actually performed. Indeed, the projections used by the Court of Chancery—as the court itself acknowledged—turned out to be overly optimistic.<sup>40</sup> Although Dell did not publicly report its earnings for the fiscal year immediately after the deal closed, it eventually publicly reported its financials for the fiscal years 2015, 2016 and 2017.<sup>41</sup> It is therefore possible to compare the projections disclosed in the deal proxy (or to Dell's bankers) for those years against the company's actual performance.<sup>42</sup>

Consistent with our previous research, an *ex post* comparison of Dell's financials with its *ex ante* projections is probative anecdotal evidence of the optimism pervading management projections.<sup>43</sup> If we first consider the management projections that were disclosed in the deal proxy—the July Plan and the September Case<sup>44</sup>—they proved to be consistently overly optimistic:

	July Plan		
	Year	FY 2015	FY 2016
Revenue	Projections	\$69.5	\$74.0
	Actuals	\$58.1	\$54.9
	Difference	<b>-19.6%</b>	<b>-34.8%</b>
Operating Income	Projections	\$5.6	\$3.0
	Actual	\$2.3	\$2.0
	Difference	<b>-145.3%</b>	<b>-51.5%</b>
Adjusted EBITDA	Actuals	\$3.2	\$2.6
	Difference	<b>-73.5%</b>	<b>-13.9%</b>

	September Case			
	Year	FY 2015	FY 2016	FY 2017
Revenue	Projections	\$63.2	\$66.0	\$68.0
	Actuals	\$58.1	\$54.9	\$54.9
	Difference	<b>-8.7%</b>	<b>-20.2%</b>	<b>-23.9%</b>
Operating Income	Projections	\$4.9	\$5.3	\$5.4
	Actual	\$2.3	\$2.0	\$1.6
	Difference	<b>-114.9%</b>	<b>-167.7%</b>	<b>-239.6%</b>
Adjusted EBITDA	Actuals	\$3.2	\$2.6	\$5.9
	Difference	<b>-51.8%</b>	<b>-101.3%</b>	<b>9.1%</b>

As illustrated above, the company's forecasts were not simply optimistic—they were repeatedly and significantly so. For example—with the exception of Adjusted EBITDA for fiscal year 2017—the actual results for EBITDA and Adjusted EBITDA were less than half of the forecasted figures for some years. And, as the Court of Chancery observed, all involved parties agreed.<sup>45</sup> The Dell board committee considered the July numbers to be “‘very optimistic’ and even ‘unrealistic.’”<sup>46</sup> And even though the September Case was thought to be “more realistic” than the July Plan, it was nonetheless also considered “overly optimistic.”<sup>47</sup> Both experts—including petitioners’—observed that the July and September cases were “overly optimistic” and “stale by the time of the Merger.”<sup>48</sup> Yet these numbers were nonetheless disclosed in the deal proxy, meaning that a Dell stockholder (or an appraisal arbitrageur deciding whether to purchase shares in Dell in order to seek appraisal) could look at these numbers and conclude that the deal price significantly undervalued the company.

The unadjusted BCG numbers—though fairly accurate with respect to revenue forecasts—also proved to be very optimistic with respect to forecasting earnings:<sup>49</sup>

	BCG Base Case			
		FY 2015	FY 2016	FY 2017
Revenue	Projections	\$55.51	\$55.05	\$54.34
	Actuals	\$58.12	\$54.89	\$55.61
	Difference	4.5%	-0.3%	2.3%
EBITDA	Projections	\$3.28	\$3.17	\$2.98
	Actuals	\$2.28	\$1.98	\$1.59
	Difference	-43.7%	-60.1%	-87.7%
Adjusted EBITDA	Actuals	\$3.23	\$2.63	\$5.94
	Difference	-1.6%	-20.4%	49.8%

	BCG 25% Case			
		FY 2015	FY 2016	FY 2017
Revenue	Projections	\$55.51	\$55.05	\$54.34
	Actuals	\$58.12	\$54.89	\$55.61
	Difference	4.5%	-0.3%	2.3%
EBITDA	Projections	\$3.70	\$4.01	\$3.82
	Actuals	\$2.28	\$1.98	\$1.59
	Difference	-62.1%	-102.5%	-140.6%
Adjusted EBITDA	Actuals	\$3.23	\$2.63	\$5.94
	Difference	-14.7%	-52.3%	35.7%

	BCG 75% Case			
		FY 2015	FY 2016	FY 2017
Revenue	Projections	\$55.51	\$55.05	\$54.34
	Actuals	\$58.12	\$54.89	\$55.61
	Difference	4.5%	-0.3%	2.3%
EBITDA	Projections	\$4.54	\$5.69	\$5.50
	Actuals	\$2.28	\$1.98	\$1.59
	Difference	-98.9%	-187.4%	-246.3%
Adjusted EBITDA	Actuals	\$3.23	\$2.63	\$5.94
	Difference	-40.7%	-116.1%	7.4%

Across all three BCG scenarios, projections for EBITDA and Adjusted EBITDA were optimistic—greatly so—as compared to the actual reported results for EBITDA and Adjusted EBITDA, with the sole exception of Adjusted EBITDA for 2017. And this is true even as to the BCG 25% Case, the case that

experts for both petitioners and respondent deemed “largely reliable,”<sup>50</sup> and that the Court of Chancery thought to be somewhat conservative (after making the relevant adjustments).<sup>51</sup> And though these projections appear more defensible than the July and September cases, they nonetheless overstate the company’s earnings by a substantial margin. These projections, too, were disclosed in the deal proxy, and could very well have fueled stockholders’ appetite for appraisal, even though they would turn out to be inaccurate.

And with respect to the Bank Case, again—and consistent with the Court of Chancery’s characterization of the forecast as optimistic—Dell consistently fell short of the *ex ante* revenue and EBITDA projections, though its Adjusted EBITDA exceeded management’s EBITDA forecasts in two out of the three years<sup>52</sup>:

	Bank Case			
		FY 2015	FY 2016	FY 2017
Revenue	Projections	\$58.71	\$60.24	\$62.03
	Actuals	\$58.12	\$54.89	\$55.61
	Difference	-1.0%	-9.8%	-11.6%
EBITDA	Projections	\$3.15	\$3.53	\$3.90
	Actuals	\$2.28	\$1.98	\$1.59
	Difference	-38.0%	-78.3%	-145.6%
Adjusted EBITDA	Actual	\$3.23	\$2.63	\$5.94
	Difference	2.4%	-34.1%	34.4%

Thus, when we step back and look at the underlying data, it is apparent that Dell’s management (and their bankers) did not produce reliable *ex ante* forecasts for the company. Even so, the Court of Chancery deemed these forecasts—albeit with adjustments—as appropriate inputs for a discounted cash flow analysis. That the Delaware Supreme Court expressed its discomfort with a DCF valuation in these circumstances, notwithstanding the Court of Chancery’s attempts to put together reliable management forecasts, is striking, casting doubt on whether courts should even attempt to adjust forecasts for management optimism where a reliable deal price is available. This approach by the Supreme Court further calls into question the centrality of management forecasts in appraisal proceedings, where, as

was the case in *Dell*, the sale process is unmarred by wrongdoing or very clear market inefficiencies.

## Conclusion

The Delaware Supreme Court's *Dell* decision encouraged the Court of Chancery to give significant weight to the deal price when it is the product of a robust and competitive sale process. Moreover, the decision invites us to rethink commonly held assumptions about the reliability of management forecasts. *Dell* provides an excellent case study confirming that a company's management is not always an accurate predictor of a company's prospects, and it is a cautionary tale for those who look to management forecasts as a metric of fair value. For example, if management has a poor track record in forecasting the company's prospects, are fears of the winner's curse overblown? And what is the Court of Chancery to do when faced with forecasts that have proved inaccurate? Here, the Court of Chancery grappled with overly optimistic forecasts and made adjustments to them in an attempt to render them more reliable. Nevertheless, the Delaware Supreme Court found that relying on a projections-based DCF valuation, instead of the deal price, was an abuse of discretion. The Supreme Court's ruling evinces profound doubt in the ability of Dell's management to accurately predict the company's future performance without introducing an upward bias—a doubt whose basis is confirmed by a comparison of the Dell projections with Dell's actual performance. The *Dell* decision and surrounding facts, in conjunction with the anecdotal evidence suggesting that management's projections tend to be overly optimistic,<sup>53</sup> confirm the considerable skepticism with which management projections should be viewed when valuing a public company in an appraisal proceeding.

## Notes

1. See Peter Welsh et al., *Management Projections in Delaware Appraisal Litigation: Anecdotal Evidence*, 31 *Insights* 10 (Oct. 2017).
2. See *id.* at 20.
3. *In re Appraisal of Dell*, No. 9322-VCL, 2016 WL 3186538 (Del. Ch. May 31, 2016).
4. See *id.* at \*45.
5. *Id.* at \*51.
6. *Dell Inc. v. Magnetar Event Driven Master Fund Ltd.*, \_\_\_ A.3d \_\_\_, 2017 WL 6375829 (Del. Dec. 14, 2017).
7. See *Dell Inc.*, *Preliminary Proxy Statement* (Mar. 29, 2013), available at <https://www.sec.gov/Archives/edgar/data/826083/000119312513134486/d505470dprem14a.htm>.
8. *In re Appraisal of Dell*, 2016 WL 3186538, at \*10.
9. The Court of Chancery, however, ultimately determined that appraisal rights had only been perfected in respect of 5,505,730 shares, "a reduction of approximately 86%" of the shares for which appraisal had originally been sought. See *Dell v. Magnetar*, 2017 WL 6375829, at \*35 n.229.
10. *In re Appraisal of Dell*, 2016 WL 3186538, at \*29.
11. See *id.* at \*37.
12. See *id.* at \*33-34.
13. See *id.* at \*42-43. In fact, the Court of Chancery suggested that the winner's curse is an "endemic," perhaps even insurmountable, problem in the context of MBOs—even those with a robust go-shop process. See *id.* at \*43.
14. See generally Richard Thaler, *Anomalies: The Winner's Curse*, 2 *J. Econ. Perspectives* 191 (1998).
15. *In re Appraisal of Dell*, 2016 WL 3186538, at \*42.
16. See *id.* at \*43-44.
17. *Id.* at \*45.
18. For example, the company's operating income for fiscal year 2014 actually fell more than 36 percent below forecasts, and the revenue projections for fiscal years 2015 and 2016 appeared to be high as well. See *id.* at \*45-46.
19. See *id.* at \*47.
20. See *id.*
21. *Id.* at \*51.
22. *Dell Inc. v. Magnetar*, 2017 WL 6375829, at \*19.
23. *Id.* at \*24.
24. *Id.* at \*23-24.
25. *Id.* at \*6, 21.
26. *Id.* at \*24-25.
27. *Id.* at \*25.
28. *Id.* at \*28.
29. *Id.* at \*28.
30. *Id.* at \*27.
31. See *In re Appraisal of Dell*, 2016 WL 3186538 at \*34.

32. See *id.* at \*46.
33. *Dell Inc v. Magnetar*, 2017 WL 6375829 at \*1, \*16.
34. See 8 Del. C. § 262(h).
35. See *DFC Global Corp. v. Muirfield Value Partners, L.P.*, 172 A.3d 346 (Del. 2017).
36. *Dell Inc v. Magnetar*, 2017 WL 6375829, at \*26.
37. *Id.* at \*26-28.
38. *Id.* at \*28.
39. *Id.* at \*32-33.
40. *In re Appraisal of Dell*, 2016 WL 3186538 at \*45 (“The Company’s actual operating income for FY 2014 was more than 36 percent below the BCG 25% Case. In addition, BCG’s projections for revenue from PC sales in FY 2015 and FY 2016 appeared high once IDC reported lower rates of PC shipments in August 2013.”).
41. All actuals are taken from Dell’s 10-K for fiscal year 2017. See *Dell Technologies Inc.*, *Form 10-K* (Mar. 31, 2017), available at <https://www.sec.gov/Archives/edgar/data/1571996/000157199617000004/delltechnologiesfy1710k.htm>. All dollar figures reflected herein are, unless otherwise noted, presented in the billions.
42. It is important to note that Dell underwent some structural changes in the years following the preparation of the management and BCG projections. Specifically, Dell sold a number of business lines (the “Divestitures”) and merged with EMC. When comparing management projections with the company’s actual performance, we wanted to ensure that the actuals most closely reflected the state of the business as it was when the forecasts were first made. Accordingly, we made some adjustments to Dell’s reported actuals. First, for the Divestitures, we added revenue back into fiscal years 2015, 2016, and 2017—as if these businesses had not been sold. We did not make any adjustments to either EBITDA or Adjusted EBITDA, insofar as the impact of Divestitures on earnings was immaterial in comparison to those for the overall company. Second, to account for the EMC merger, we subtracted the incremental revenue associated with the merger for fiscal year 2017 only. However, the reported financials did not provide enough information to make similar modifications for EBITDA or Adjusted EBITDA, and those numbers were accordingly left intact.
43. Our prior research focused principally on companies that were acquired by financial buyers, insofar as such transactions afforded the opportunity to test projections for standalone companies against actuals for those same standalone companies, without the uncertainty introduced by consolidated operations, synergies, and consolidated financials. See *Welsh*, *supra* n.1 at 17 & n.24. It has been suggested that financial buyers are more likely to target underperforming companies and that, accordingly, those companies are more likely to miss management forecasts than the average company. This critique, however, is somewhat beside the point. That is, if a company is missing management’s forecasts, the reasons *why* the company is underperforming matter less than the simple fact *that* the company is underperforming. That management is failing to accurately project the company’s long-term prospects should give pause to anyone attempting to piece together a valuation based on those forecasts. And, for that matter, if a company has been underperforming, that they are deemed attractive enough for takeover by a financial buyer suggests that the buyer believes the company has decent prospects and—in the hands of new management—is likely to improve its performance. Our anecdotal evidence suggests that, even if the acquired company’s performance may improve while under new management, its performance certainly does not improve enough to bring performance in line with management’s forecasts. See *id.* at 17-18.
44. These forecasts are found in Dell’s preliminary proxy statement. See *Dell*, *supra* n.7. It should be noted that the Court of Chancery refers to the July projections as the “July Case,” whereas the company itself referred to them as the “July Plan.” We adopt the latter formulation. Although the other forecasts reviewed had projections for fiscal year 2017, the July Plan’s numbers—as disclosed in the proxy—go only through 2016.
45. See *in re Appraisal of Dell*, 2016 WL 3186538, at \*5-6, 45-46.
46. *Id.* at \*5.
47. *Id.* at \*6.
48. *Id.* at \*45.
49. See *id.* at \*10.
50. See *Dell Inc. v. Magnetar*, 2017 WL 6375829, at \*32-33.
51. See *In re Appraisal of Dell*, 2016 WL 3186538, at \*46.
52. *Id.* at \*19.
53. See *Welsh*, *supra* n.1 at 17-18.