

CLIENT ALERT

# Delaware Supreme Court Reverses Chancery Court Decision in Closely Watched *Dell* Appraisal Proceeding

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Yesterday, the Delaware Supreme Court issued an important appraisal rights decision, holding that the Chancery Court abused its discretion by giving no weight to the transaction price when valuing the shares of Dell Inc. at the time of its 2013 going-private transaction.

In his May 2016 appraisal decision, Vice Chancellor J. Travis Laster relied entirely on the court's own DCF analysis to determine that the fair value of Dell was approximately \$7 billion higher than the 2013 transaction price. On appeal, Dell argued that the trial court's decision improperly failed to take into account the deal price and pre-transaction stock price. The Supreme Court found that the Vice Chancellor Laster did properly take into account all relevant appraisal factors, but abused his discretion by giving no weight whatsoever to the deal price, a decision that did not "follow from the court's key factual findings and from relevant, accepted financial principles." Simply put, the Court found that "the record as distilled by the trial court suggests that the deal price deserved heavy, if not dispositive, weight."

As identified by the Supreme Court, the Chancery Court relied on three central premises in assigning no weight to the deal price. These were: a "valuation gap" between the stock price and Dell's intrinsic value due to shortsighted investors and an inefficient market for Dell's stock; a lack of strategic, rather than financial, buyers in the sale process artificially depressed the deal price; and a general view that certain problems endemic to MBOs such as the Dell transaction undercut the deal price's credibility.

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The Supreme Court rejected each of these premises in turn:

- The Supreme Court found that Vice Chancellor Laster’s basis for finding a “valuation gap” was not supported by the record, which instead showed that Dell’s stock was trading in an efficient, liquid, and transparent market, which was fully capable of assessing the company’s long-term outlook.
- Citing its recent decision in *DFC Global Corp. v. Muirfield Value Partners*, 2017 WL 3261190 (Del. Aug. 1, 2017), the Supreme Court reiterated that there is “no rational connection between a buyer’s status as a financial sponsor and the question of whether the deal price is a fair price.” Here, the Supreme Court found that “Dell’s sale process bore many of the same objective indicia of reliability that we found persuasive enough to diminish the resonance of any private equity carve out or similar such theory in *DFC*.”
- The Supreme Court disagreed that any of the “theoretical characteristics” of MBOs identified by the trial court—such as the ineffectiveness of go-shops or the threat of a “winner’s curse” that could inhibit a third-party topping bid—“detracts from the reliability of the deal price on the facts presented here.”

While the decision continues to underscore the importance of deal price in appraisal cases, the Supreme Court once again explicitly declined to create a bright line rule: “We are not saying that the market is always the best indicator of value, or that it should always be granted some weight. We only note that, when the evidence of market efficiency, fair play, low barriers to entry, outreach to all logical buyers, and the chance for any topping bidder to have the support of Mr. Dell’s own votes is so compelling, then failure to give the resulting price heavy weight ... abuses even the wide discretion afforded the Court of Chancery in these difficult cases.”

In light of its findings as to the substantial probative value of the deal price and other market indicia, the Supreme Court also questioned the trial court’s reliance on its own DCF calculations, which had to reconcile the \$28 billion gap in the competing valuations submitted by the parties’ experts. The Supreme Court acknowledged that a DCF analysis could provide a “helpful data point” for the court’s valuation, but cautioned that where, as here, “a robust sale process” has occurred, “the Court of Chancery should be chary about imposing the hazards that always come when a law-trained judge is forced to make a point estimate of fair value based on widely divergent partisan expert testimony.”

The Supreme Court remanded the case to the Chancery Court for further proceedings, noting that the court could enter judgment at the deal price with no further proceedings, or, if the court chooses another route to ascertain fair value, it should do so in conformity with the Supreme Court’s guidance and explain its rationale for its assessment of the relevant factors and weightings assigned to those factors.

The risks of appraisal litigation in M&A transactions is well established. Companies assessing M&A transactions must consider such risks as a matter of course in addition to the risk of class action litigation. While *Dell* deliberately does not lay down a bright line rule, it nevertheless gravitates towards deal price as the proper estimate of fair value. Large

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shareholders, too, should take heed of the *Dell* decision before making the decision to dissent and seek appraisal, which can often be a timely and costly process.

If you have any questions about the *Dell* decision or appraisal generally, please contact the following attorneys or the attorney with whom you regularly work.

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