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Transparency, Independence, Fairness Opinions and the SEC

By Ralph Consola, Principal

Earlier this year, the Securities and Exchange Commission (SEC) proposed new disclosure requirements to improve the quality of information for investors in adviser-led secondary transactions and SPAC / de-SPAC transactions.

The SEC's proposed changes are extensive. This article addresses their recommendations that **increase transparency to potential investors** including disclosing projected financial performance for the subject investments and potential conflicts of interest of the parties involved with the transaction, specifically the **recommendation of independent Fairness Opinions** for both de-SPAC transactions and for adviser-led secondary transactions. Below is a brief overview of Fairness Opinions and the SEC's recommendations.

Fairness Opinions are provided as a tool to advise company boards, management, and other fiduciaries on the fairness of a transaction, from a financial point of view, to the investors to whom they have a duty. Fairness Opinions are sought by buy-side and sell-side fiduciaries, but one Fairness Opinion firm does not provide an opinion for both sides of a transaction.

The benefits of a properly prepared independent Fairness Opinion are:

- Documentation of the results of a valuation process and the financial issues that were taken into consideration.
- A written opinion that the value arrived at is fair from a financial point of view to the identified parties.
- Tangible evidence that can be used in litigation to demonstrate that the fiduciaries acted reasonably and on a well-informed basis.
- Transaction insight to fiduciaries from a source that is unbiased by transaction or other performance commission.

It should be clear that Fairness Opinions do *not* opine that a specific transaction is the *best deal* available, only that the subject transaction is *fair.*

Adviser-led Secondary Transactions

Defined as any transaction initiated by the investment adviser or any of its related persons that offers private fund investors the choice to:

1. Sell all or a portion of their interests in the private fund; or
2. Convert or exchange all or a portion of their interests in the private fund for interests in another vehicle advised by the adviser or any of its related persons.

800 West Sixth Street, Suite 950, Los Angeles, CA 90017 213.612.8000 **marshall-stevens.com**