

Fairness Opinion Advisory

FAIRNESS OPINIONS: PROTECTING THE CORPORATION AND ITS SHAREHOLDERS

In today's environment of increasing regulatory oversight and an ever vigilant plaintiffs' bar, it is more important than ever for boards of directors and executive management to implement "best in class" corporate governance practices. Boards must be able to thoroughly defend and justify their decisions to shareholders and other stakeholders – especially in the context of sensitive or extraordinary transactions such as acquisitions, reorganizations, transactions with insiders and private placements. Sound independent financial advice can help insulate directors and officers from legal challenges and liability.

A fairness opinion is a valuable form of financial advice that can help a board meet its fiduciary obligations and avoid litigation. Although fairness opinions are not legally required, companies are increasingly seeking them in the context of significant transactions to help improve results and reduce litigation risks.

WHAT IS A FAIRNESS OPINION?

A fairness opinion is essentially a valuation analysis provided by a financial advisor that assesses whether a particular transaction is fair to all shareholders or a specified constituency. However, a fairness opinion goes beyond a typical valuation analysis. The value of what is being given up and the value of what is being obtained in exchange is thoroughly examined in a fairness opinion.

In a merger, this will typically involve determining the value of the merged entity. In a stock issuance, this will typically involve an assessment of the purposes to which the capital is to be used and the impact on the value of the company going forward. While fairness opinions evaluate whether a transaction is fair, they do not opine on whether the price is the best price.

PURPOSE OF A FAIRNESS OPINION

- Documents the results of the valuation process and the financial issues that were taken into consideration.
- Provides the board of directors with written assurances that the value arrived at is fair from a financial point of view.
- Provides tangible evidence that can be used in litigation to demonstrate that the board of directors acted reasonably and on a fully informed basis.

WHEN IS A FAIRNESS OPINION NEEDED?

Fairness opinions are typically obtained in extraordinary transactions. Fairness opinions are especially relevant where a company has a controlling shareholder or where one or more members of the board of directors or management have an interest in the



transaction that may conflict with the interests of the company's shareholders. Examples of extraordinary transactions where fairness opinions are often sought are:

- Mergers, acquisitions, divestitures and change of control
- Unsolicited tender offers and hostile takeovers
- Going private
- Private placements (especially in situations that may result in dilution to existing shareholders)
- Corporate restructurings
- Sale of a division, subsidiary or brand

MARSHALL & STEVENS EXPERIENCE

Fairness advice from an independent financial advisor can assure a board and its stakeholders that the decisions made by the board are fair and reasonable.

Marshall & Stevens has been in the valuation business for more than 85 years and has substantial expertise in rendering fairness opinions on a wide variety of transactions. Employing a high degree of thoroughness and diligence, our professionals bring a wealth of experience from backgrounds in valuation, law, investment banking and accounting. With a national team of approximately 100 employees, we are large enough to handle virtually any valuation matter, but small enough to be sure that each engagement receives the attention it deserves.

MORE INFORMATION

Marshall & Stevens has a 16-page Fairness Opinion Guide for your reference which is available at www.marshall-stevens.com. If you would like a copy sent to you or would like to speak with a valuation consultant, contact one of the professionals listed below.



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