



Business Valuation
& Advisory

A Basic Guide to Fairness Opinions

Since the landmark Delaware Supreme Court opinion *Smith v. Van Gorkham*^[1], the fairness opinion has been a familiar method by which corporate directors and other fiduciaries have demonstrated that business judgment was used in considering a transaction, thus reducing shareholder litigation risk related to the transaction. Following *Van Gorkham*, it has become increasingly important to use the fairness opinion in such a way that it will have the maximum effectiveness.

What is a Fairness Opinion?

A fairness opinion refers to the fairness of the consideration of a specific transaction. The fairness opinion opines whether the proposed consideration is “fair” or within an acceptable range of values, from a financial point of view.

The fairness opinion does not opine that the price associated with a specific transaction is the highest price, nor does it provide an opinion as to a specific price for the transaction.

When Should a Fairness Opinion be Obtained?

A fairness opinion is often obtained in a change of control transaction. Because the fairness opinion is generally not required by regulation or statute, the sole discretion as to whether to obtain a fairness opinion rests with the board of directors or other fiduciary.

Fairness opinions are frequently procured in the following situations: divestitures, ESOPs, going private, mergers & acquisitions, recapitalizations, minority shareholder redemptions, refinancings, restructurings, sales, shareholder transactions, spin offs and stock repurchases, among others.

^[1] 488A.2d 858 (Del. 1985).

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What are the Essential Characteristics of the Fairness Opinion?

The preparation and reporting of the fairness opinion should be conducted in a manner that provides maximum strength for the board of directors in the event of shareholder scrutiny. Many valuation professionals comply with standards of practice such as the Uniform Standards of Professional Appraisal Practice (USPAP), the American Society of Appraisers and the CFA Institute, among others. Compliance with guidance issued from recognized professional organizations such as these is vital to providing a strong fairness opinion to the board of directors, thus reducing the likelihood of a shareholder challenge.

What Should You Consider When Selecting an Advisor to Prepare a Fairness Opinion?

The critical attributes to consider when selecting a financial advisor to prepare a fairness opinion include:

- 1) independence and objectivity** of the financial advisor
- 2) experience** of the financial advisor
- 3) the process** by which the fairness opinion is approved by the financial advisor

First, conflicts of interest involving the financial advisor preparing the fairness opinion could result in shareholder litigation, thus mitigating the very purpose of obtaining the fairness opinion. Second, an inquiry as to the relevant experience of the financial advisor is advised. Third, the financial advisor should be asked to explain the firm's fairness opinion committee process and selection of valuation methods appropriate for the transaction. Careful consideration of these factors will facilitate the selection of a financial advisor that can provide a convincing fairness opinion, providing the board with maximum strength in the event of a shareholder action.

About MPI

For over 75 years, MPI has provided independent and objective opinions of fairness, solvency and valuation. Our highly-regarded staff includes experienced professionals known for their compliance with USPAP standards of independence and objectivity. Please visit our corporate website at www.mpival.com or contact us to discuss your fairness opinion needs.

Contact us to inquire about a fairness opinion or to learn more about what MPI can do for you:

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