

The Delaware Supreme Court Underscores the Significance of the Deal Price

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The Delaware Supreme Court, sitting *en banc*, recently reversed in part and remanded the Court of Chancery's decision regarding the appraisal of Dell, Inc. ("Dell")[i], which builds upon another recent appraisal decision in which the Delaware Supreme Court (the "Supreme Court") rejected a bright-line rule in favor of the deal price, but held that the deal price should typically be the best evidence of fair value when the sale involves a public company and a robust arm's-length sales process.[ii]

In its post-trial opinion, the Court of Chancery—rejecting the deal price and relying on its own discounted cash flow ("DCF") analysis—held that the fair value of Dell's stock was \$17.62 per share, which was nearly 30% above the \$13.75/share merger price paid to stockholders in October 2013.[iii]

The Supreme Court specifically rejected the three central premises on which the Court of Chancery had relied in rejecting the Dell deal price. First, the Supreme Court found that the Court of Chancery lacked a valid basis for finding a valuation gap between Dell's stock price and its intrinsic value. To the contrary, the record established that Dell had a deep public float, coverage by over 30 equity analysts in 2012, no controlling stockholder, and was traded in an efficient market. Second, the Supreme Court rejected the Court of Chancery's concern that there was a lack of strategic bidders. Citing its recent *DFC Global* appraisal opinion,[iv] the Supreme Court reiterated that it sees no rational connection between a buyer's status as a financial bidder and whether the deal price is fair because all buyers assess internal rates of return. Third, the Supreme Court found that none of the "theoretical characteristics" that may be problematic in management-led buyouts ("MBOs")—such as structural issues, management's perceived value to the company, and the "winner's curse" (the phenomenon in which a buyer overpays because of the perception that incumbent management would have paid more if the company was worth it)—applied to Dell. Rather, the Supreme Court found that rival bidders faced minimal structural barriers to a deal, that Dell's due diligence cooperation addressed the possibility of the "winner's curse," and that simply because Dell's stock dropped in 2004 when Mr. Dell left and rose in 2007 when he returned did not demonstrate Mr. Dell's value six years later after investors questioned Mr. Dell's company strategies.

In remanding the matter to the Court of Chancery, the Supreme Court gave the vice chancellor the discretion to enter judgment at the deal price without further proceedings. However, the Supreme Court instructed that if the Court of Chancery were to choose a

different route, it must adhere to the Supreme Court's reasoning on the DCF valuation, and, if weighing various factors, the vice chancellor must explain his reasoning. As it did in its recent decision in *DFC Global*, the Supreme Court in *Dell* refused to create a strict rule presuming the fairness of the transaction price, but reinforced the significance of the deal price in assessing fair value. The Supreme Court implied that if the Court of Chancery is going to stray far from the deal price, it must have a strong justification for doing so. Nevertheless, the Supreme Court's reasoning in both *DFC Global* and *Dell* was very fact-specific, signaling that the appraisal analysis continues to be a case-by-case assessment. Indeed, there may be instances in which the deal price lacks significance, such as when problems pertaining to MBOs are not mitigated.

[i] *Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd*, 2017 WL 6375829, at *1 (Del. Dec. 14, 2017) ("*Dell*").

[ii] See *DFC Global Corp. v. Muirfield Value Partners, L.P.*, 172 A.3d 346, 348 (Del. 2017) ("*DFC Global*").

[iii] A summary of the Court of Chancery's opinion in *In re Appraisal of Dell Inc.*, 2016 WL 3186538, at *1 (Del. Ch. May 31, 2016), is available [here](#).

[iv] See n.ii *supra*.