PAUL HASTINGS

STAY CURRENT

August 2018

Follow @Paul_Hastings

The Full Dell*: Court Holds Appraisal Value = Deal Price Less Synergies*

By David Shine, Darcy White & Russell Franklin

The Delaware Court of Chancery recently issued a decision (*In re Solera Holdings Stockholder Litigation*) that squarely applies the Delaware Supreme Court's high profile decision in *Dell v. Magnetar Global*. In *Dell*, the Supreme Court had held that, where a sale process bears "indicia of reliability", the deal price should be afforded "heavy weight" as a proxy for fairness. The *Solera* court, having first found the sale process to have the requisite *Dell* indicia of reliability, applied the deal price as a proxy for fairness and then, critically, reduced that amount by the estimated value of merger synergies.

The *Solera* deal price was $55.85 per share. The stockholders argued, based on a discounted cash flow model prepared by their valuation expert, that the fair price for appraisal purposes should be $84.65 (an approximate 51% premium over the deal price). Solera first argued that the fair price for appraisal purposes should be the deal price less merger synergies, and then amended its position to assert that the fair value should be the "unaffected market price" of $36.39 (approximately 35% less than the deal price).

The *Solera* court found that the sale process, "although not perfect," was characterized by "many objective indicia of reliability." These included a two-month outreach to large private equity firms, a process run by a special committee which was "independent and fully authorized" (with the power to say no to a transaction) and which had "competent" legal and financial advisors; a six-week auction process run by the special committee; public disclosures that made clear the company was for sale; and a 28-day go-shop period once the transaction was announced. Furthermore, the court found that the sale process was conducted "against the backdrop of an efficient and well-functioning market for Solera's stock."

In light of these findings, and substantially based on the Supreme Court's decision in *Dell*, the Court of Chancery held that the fair price was $53.95 per share, consisting of the deal price ($55.85 per share) less $1.90 per share of merger synergies (based on expert valuation testimony).

In reaching this decision, the court cited the Delaware appraisal statute provision that "the Court shall determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger." The court also stated clearly that synergies do not arise only in the context of strategic acquirers, but that synergies may exist where a financial sponsor is the acquirer. On this point, the court noted that the financial sponsor in this case had other portfolio companies that had significant "touch points" with Solera from which synergies could be realized. The *Dell* court had been less than crystal clear on this point.

Solera may be appealed. However, the *Solera* court has certainly made an effort to clearly and methodically apply the Supreme Court's previously articulated legal analysis for appraisal. In an environment where appraisal claims have become more and more uncertain and risky for stockholders, *Solera* may further cool the market for these actions other than potentially in situations where there is meaningful evidence that the sale processes did not meet the *Dell* standards of reliability.

✧ ✧ ✧

If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

David N. Shine
1.212.318.6484
davidshine@paulhastings.com

Darcy R. White
1.404.815.2525
darcywhite@paulhastings.com

Russell M. Franklin
1.212.318-6012
russellfranklin@paulhastings.com