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## Delaware Court of Chancery Finds Zero Merger Consideration to Be Entirely Fair to Common Stockholders

In *In re Trados Inc. S'holder Litig.*, the Delaware Court of Chancery held that while management and the preferred stockholders received all of the merger consideration in the sale of a corporation, the merger was still entirely fair to the common stockholders because the common stock had no economic value before the merger. For more detail, click [here](#).

## Other Notable Developments

### *Controlling Stockholder Transactions*

Following *In re MFW S'holders Litig.*, [discussed here](#), where the court applied the business judgment rule—instead of the more onerous entire fairness review—to a going-private merger by a controlling stockholder because the merger was structured to protect minority stockholders adequately, the Delaware Court of Chancery issued two additional opinions also relating to the standard of review applicable to controlling stockholder transactions.

In *Southeastern Transp. Auth. v. Volgenau*, the Court of Chancery reiterated that a transaction between a third party and a corporation with a controlling stockholder, in which the controlling stockholder receives a minority interest in the surviving entity, will be entitled to review under the business judgment rule if the transaction is (1) recommended by a disinterested and independent special committee, and (2) approved by a non-waivable vote of a majority of the minority stockholders. The plaintiff, however, has appealed this decision. To view the Court of Chancery's opinion, click [here](#).

In *In re Morton's Restaurant Grp., Inc. S'holders Litig.*, the Court of Chancery determined that a stockholder with a 27.7% interest in the corporation and the right to elect two of the corporation's 10 directors was not a controlling stockholder. Further, the court noted in dicta that when a large stockholder supports an arm's length transaction that results from a thorough market check, and the transaction consideration is shared ratably among the stockholders, "such conduct presumptively considers equal treatment as a safe harbor and immunizes the transaction." To view the Court of Chancery's opinion, click [here](#).

*Financial Advisors and Fairness Opinions*

*In re Morton's*, along with *Miramar Firefighters Pension Fund v. Abovenet, Inc.*, also addressed when a board of directors' use or reliance on a financial advisor is in bad faith.

In *In re Morton's*, the plaintiffs alleged that the analyses of the two financial advisors retained by the board "had such obvious errors that the board could only have relied on the fairness opinions with the intent to approve a lowball transaction." The court dismissed the plaintiffs' claims as merely "quibbles with the inputs used" by the financial advisors, holding that the claims did not support a "reasonable inference that the board purposely relied on analyses that were inaccurate for some improper reason." The court noted further that although the financial advisors' models did not reflect plaintiffs' view of the appropriate value for the company, this allegation alone was insufficient to support an inference that the board members relied on them in bad faith.

In *Abovenet*, the plaintiff alleged that in connection with a sale of the corporation, the corporation's CEO and its financial advisor manipulated the corporation's financial projections and the directors breached their fiduciary duties by relying on them. The court dismissed these claims, again finding that the alleged "manipulation [was] merely a quibble" with the financial analysis, because (i) the financial advisor made a rational estimate; (ii) the financial analysis was fully disclosed; and (iii) the assumptions and projections were not so irrational that the board had to have known the analyses were flawed. The plaintiff asserted further that the board breached its fiduciary duties in connection with conducting a go-shop by selecting a financial advisor that had never run a go-shop before. The court dismissed this claim as well, noting that the plaintiff did not attack the adequacy of the go-shop and did not allege that the board knew the financial advisor had not run a go-shop before. To view the Court of Chancery's opinion, click [here](#).

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## M&A Markets

The following issues of M&A at a Glance, our monthly newsletter on trends in the M&A marketplace and the structural and legal issues that arise in M&A transactions, were published this quarter. Each issue can be accessed by clicking on the date of each publication below.

- [July 2013](#)
- [August 2013](#)
- [September 2013](#)

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