
January 6, 2017

Delaware Court of Chancery Dismisses Complaint Seeking Quasi-Appraisal Remedy Based on Post-Closing Disclosure Claims

In *In re United Capital Corp. Stockholders Litigation*, the Delaware Court of Chancery granted the defendants' motion to dismiss a complaint filed by a former minority stockholder of United Capital Corporation seeking "quasi-appraisal" as a remedy in connection with the 2015 short-form merger under Section 253 of the Delaware General Corporation Law between United Capital and its controlling stockholder. The plaintiff alleged that the notice sent to stockholders in connection with the merger made various omissions, none of which the Court found material to the minority stockholders' decision of whether to seek appraisal in connection with the merger. Therefore, the Court held that the only remedy available to minority stockholders was appraisal.

Background

In June 2015, United Capital received an offer from its 94% controlling stockholder to purchase the minority shares of the company for \$30 per share. The board formed a special committee of independent directors to consider the offer, a step which is unusual in the context of a Section 253 short-form merger, and the special committee determined not to retain any advisors other than legal counsel. After negotiations with the controlling stockholder, the special committee approved a short-form merger under Section 253 with the controlling stockholder pursuant to which the minority stockholders would receive \$32 per share. Before the merger became effective, the minority stockholders received a written notice of the merger, which included, among other things, financial statements for the current and two prior years, management's analysis of the company's financial status, disclosures about the background of the merger and disclosures relating to potential board and special committee conflicts.

Following the effective date of the merger, the plaintiff filed his complaint seeking a "quasi-appraisal" of the minority shares, a post-closing remedy available in the Court of Chancery for stockholders who can plead successfully that they lacked material information in deciding whether to seek a full appraisal remedy. The plaintiff based his claims on various alleged disclosure violations in the notice received by minority stockholders in connection with the merger.

Analysis

In considering plaintiff's claims, the Court, relying on the Delaware Supreme Court's opinion in *Glassman v. Unocal Exploration Corp.*, noted that in the context of a Section 253 short-form merger, the parent

corporation is not required to establish entire fairness; rather, “absent fraud or illegality, the only recourse for a minority stockholder who is dissatisfied with the merger consideration is appraisal.” The company is only required to notify the minority of the availability of appraisal rights, provide them with a correct copy of the appraisal statute, and disclose information material to the decision of whether or not to seek appraisal. The Court noted that a disclosure violation results in irreparable injury, which the Court may remedy through “quasi-appraisal.”

Detailing the contents of the eighty-page merger notice, the Court noted that the plaintiff used the financial statements attached to the notice to decide that the merger price’s \$186.6 million implied total equity value significantly undervalued the company in view of, among other measures, total assets of \$342.4 million (nearly twice the implied equity value). Thus, the Court noted that plaintiff’s allegations suggest that the financial disclosures gave plaintiff “the minimum information necessary to determine whether he could ‘trust that the price offered is good enough,’ or whether the price undervalued the company ‘so significantly that appraisal is a worthwhile endeavor.’”

The Court then considered each of the plaintiff’s alleged disclosure violations, including allegations that the notice omitted (1) the information used by the special committee to set the merger price, (2) the controller’s rationale for his initial offer, (3) specific financial information, including projections, (4) the extent to which cash and cash equivalents were working capital, (5) potential conflicts of two of the three special committee members, and (6) the identities of certain directors and a director’s spouse who jointly owned an \$8 million note with the company. In each case, the Court concluded, based on the facts, that the notice did not contain a material omission, and that it contained the requisite information for stockholders to decide whether to seek appraisal. In the absence of a showing of fraud, illegality or a disclosure violation, the Court concluded that appraisal was the sole remedy available to minority stockholders in challenging the short-form merger, and therefore dismissed the complaint seeking a quasi-appraisal remedy.

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