# ACCOUNTING AND FINANCE FOR LAWYERS

Assignment for First Day of Class, Aug. 21, 2018

Prior to class please read the excerpts (below) from the opinion of the Delaware Supreme Court in Dell v. Magnetar Global Event Driven Master Fund. Please note the following:

1. The full opinion is close to 80 pages long, so I have excerpted it as best I can trying to retain its essence while making it manageable.
2. The opinion contains lots of financial terms that will be unfamiliar to you. I have highlighted at least some of them. Do not worry or get nervous! That is why you are taking this course. ☺ By the end of the semester you will understand all of it.
3. Please come to class prepared to discuss the following three questions—(i) what the heck is going on in this case? (ii) did the Supreme Court find that the lower court mis-read the law or misapplied the law to the facts? and (iii) how can law judges be expected to determine the "value" of a company applying "established financial principles" if they have had absolutely no training in accounting or finance?

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DELL, INC., v. MAGNETAR GLOBAL EVENT DRIVEN MASTER FUND LTD; et al.

Submitted: September 27, 2017 Decided: December 14, 2017

Before **STRINE**, Chief Justice; **VALIHURA**, **VAUGHN**, and **TRAYNOR**, Justices; and **LeGROW**, Judge * constituting the Court *en Banc*.

**VALIHURA**, Justice:

The petitioners left standing in this long-running appraisal saga are former stockholders of Dell Inc. ("Dell" or the "Company") who validly exercised their appraisal rights instead of voting for a buyout led by the Company's founder and CEO, Michael Dell, and affiliates of a private equity firm, Silver Lake Partners ("Silver Lake"). In perfecting their appraisal rights, petitioners acted on their belief that Dell's shares were worth more than the deal price of $13.75 per share—which was already a 37% premium to the Company's ninety-day-average unaffected stock price.

Our appraisal statute, 8 *Del. C.* § 262, allows stockholders who perfect their appraisal rights to receive "fair value" for their shares as of the merger date instead of the merger consideration. The appraisal statute requires the Court of Chancery to assess the "fair value" of such shares and, in doing so, "take into account all relevant factors." The trial court complied: it took into account all the relevant factors presented by the parties in advocating for their view of fair value—including Dell's stock price and deal price—and then arrived at its own determination of fair value.

The problem with the trial court's opinion is not, as the Company argues, that it failed to take into account the stock price and deal price. The trial court *did consider* this market data. It simply decided to give it no weight. But the court nonetheless erred because its reasons for giving that data no weight—and for relying instead exclusively on its own discounted cash flow ("DCF") analysis to reach a fair value calculation of $17.62—do not follow from the court's key factual findings and from relevant, accepted financial principles.

Here, the trial court gave no weight to Dell's stock price because it found its market to be inefficient. But the evidence suggests that the market for Dell's shares was actually efficient and, therefore, likely a possible proxy for fair value. Further, the trial court

concluded that several features of management-led buyout ("MBO") transactions render the deal prices resulting from such transactions unreliable. But the trial court's own findings suggest that, even though this was an MBO transaction, these features were largely absent here. Moreover, even if it were not possible to determine the precise amount of that market data's imperfection, as the Court of Chancery concluded, the trial court's decision to rely "exclusively" on its own DCF analysis is based on several assumptions that are not grounded in relevant, accepted financial principles.

We REVERSE, in part, and AFFIRM, in part, and REMAND for these reasons and those that follow. In addition, for reasons discussed in Section IV, we REVERSE and REMAND the Court of Chancery's decision concerning the allocation of fees and costs among the appraisal class.

In June 2012, when the idea of an MBO first arose, Dell was a mature company on the brink of crisis: its stock price had dropped from $18 per share to around $12 per share in just the first half of the year. The advent of new technologies such as tablet computers crippled the traditional PC-maker's outlook. The Company's recent transformation struggled to generate investor optimism about its long-term prospects. And the global economy was still hungover from the financial crisis of 2008.

Other than a brief hiatus from 2004 to his return in 2007, Michael Dell had led Dell as CEO, from the Company's founding in his first-year dorm room at the University of Texas at Austin when he was just nineteen years old, to a Fortune 500 behemoth with

global revenues hitting $56.9 billion in the fiscal year ending February 1, 2013. Dell was indisputably one of the world's largest IT companies.

Upon his return to the Company in 2007, Mr. Dell perceived three key challenges facing Dell. First, low-margin PC-makers such as Lenovo were muscling into Dell's market share as the performance gap between its higher-end computers and the cheaper alternatives narrowed. Second, starting with the launch of Apple's iPhone in 2007, the impending onslaught of smartphones and tablet computers appeared likely to erode traditional PC sales. Third, cloud-based storage from the likes of Amazon.com threatened the Company's traditional server storage business.

In light of these threats, Mr. Dell believed that, to survive and thrive, the Company should focus on enterprise software and services, which could be accomplished through acquisitions in these spaces. From 2010 through 2012, the Company acquired eleven companies for approximately $14 billion. And Mr. Dell tried to sell the market on this transformation. He regularly shared with equity analysts his view that the Company's

enterprise solutions and services divisions would achieve annual sales growth in the double-digits and account for more than half of Dell's profits by 2016.

Yet despite Dell's M&A spurt and Mr. Dell's attempts to persuade Wall Street to buy into the Company's future, the market still "didn't get "Dell, as Mr. Dell lamented. It still viewed the Company as a PC business, and its stock hovered in the mid-teens.

Dell's stock traded on the NASDAQ under the ticker symbol DELL. The Company's market capitalization of more than $20 billion ranked it in the top third of the S&P500. Dell had a deep public float and was actively traded as more than 5% of Dell's shares were traded each week. The stock had a bid-ask spread of approximately 0.08%. It was also widely covered by equity analysts, and its share price quickly reflected the

market's view on breaking developments. Based on these metrics, the record suggests the market for Dell stock was semi-strong efficient, meaning that the market's digestion and assessment of all publicly available information concerning Dell was quickly impounded into the Company's stock price. For example, on January 14, 2013, Dell's stock jumped 9.8% within a minute of Bloomberg breaking the news of the Company's take-private talks, and the stock closed up 13% from the day prior—on a day the S&P 500 as a whole fell 0.1%.

The first inkling of a Dell MBO can be traced to June 2012, when private equity executive Staley Cates of Southeastern Asset Management suggested to Mr. Dell that he might consider taking the Company private. Mr. Dell was intrigued as he believed it would be easier to execute the Company's transformation plan unencumbered by stockholder pressure. However, the Company's financial advisor, Goldman Sachs, warned that an MBO would be too difficult to pull off. But after Silver Lake's Egon Durban also proposed the idea of an MBO that August, Mr. Dell enlisted the advice of

friend and private equity executive George Roberts of Kohlberg Kravis Roberts & Co. L.P. ("KKR"). This time, he received positive feedback, including an indication that KKR might be interested in participating should the Company go that route. Mr. Dell then brought the idea to Dell's Board by calling the Company's lead independent director, Alex Mandl, on Friday, August 14, 2012.

The following Monday, the Board met and created an independent special committee composed of four independent directors (the "Committee") to evaluate possible transactions to acquire the Company proposed by Mr. Dell and/or any other party, as well as to explore possible strategic alternatives. The Board empowered the Committee to hire its own legal and financial advisors, and the Committee selected Debevoise & Plimpton LLP as legal counsel and JP Morgan Chase & Co. as financial advisor. (The Committee eventually hired Evercore Partners as a second financial advisor in January 2013.) The Committee also had full and exclusive authority to recommend to the Board a course of action regarding any proposed transaction, and the Board vowed not to recommend that

stockholders approve a transaction without receiving a prior favorable recommendation from the Committee.

Dell's earnings for the second quarter of Fiscal 2013, announced the following day, August 21, 2012, underscored the Company's challenges: revenue was down 8% from the

prior year, and earnings per share dropped 13%. The Company's revenue fell short of expectations, and its management further revised its EPS forecast down 20% for Fiscal 2013. Dell management said that the Company was amid a "long-term strategy" expected to "take time" to reap benefits. But one analyst called the Company a "sinking ship" and emphasized that "Dell's turnaround strategy is fundamentally flawed [and] the fundamentals are bad. Dell may have responded too late to save itself." Many analysts also revised their price targets downward.

The following month, September, after entering into confidentiality agreements with the Committee, Silver Lake and KKR began evaluating Dell's proprietary data, including management projections.

Mr. Dell, who owned 13.9% of the Company's outstanding shares as of August 2012 and 15.4% as of September 2012, also entered into a confidentiality agreement. Mr. Dell's confidentiality agreement required him to, among other things, "explore in good faith the possibility of working with any such potential counterparty or financing source if requested by the Committee," a provision designed to prevent his prior involvement with KKR and Silver Lake from deterring other possible bidders.

After consulting with JPMorgan, the Committee decided to limit its initial pre- signing market canvass to KKR and Silver Lake because they were, according to JPMorgan, "among the best qualified potential acquirers," and "there was a low probability of strategic buyer interest in acquiring the Company." Using management forecasts that the Committee still considered "overly optimistic," on October 9, 2012, the day after the Company's stock price closed at $9.66 per share, JPMorgan shared with the Committee that it believed a financial sponsor could pay approximately $14.13 per share and still obtain an internal rate of return ("IRR") of a level that could attract private equity buyers such as KKR and Silver Lake, a five-year IRR of 20% per share. At several Committee meetings that fall, JPMorgan and the Company's bankers from Goldman Sachs shared a range of valuations for various transaction scenarios, including Goldman's projections for the Company's future share prices if Dell remained a standalone public Company.

On October 23, 2012, a day on which Dell's stock price was to close at $9.35, both KKR and Silver Lake proposed transactions to the Committee. KKR indicated its interest in an all-cash transaction at between $12.00 and $13.00 per share, excluding Mr. Dell's and Southeastern's shares. Under KKR's proposal, Mr. Dell was to invest an additional

$500 million in the Company. Silver Lake proposed an all-cash transaction at between $11.22 and $12.16 per share, excluding Mr. Dell's shares.

But, as JPMorgan observed when reviewing these proposals with the Committee, these expressions of interest undershot the $14.13 per share that it believed a financial sponsor could pay. The Committee asked Mr. Dell to email both firms to encourage them to raise their offers, and he obliged—sending the same email to each in which he offered for Company management to meet with representatives of each firm and solicited their advice on what the Company could do to help improve their proposals.

But the Company's third-quarter earnings, released on November 15, 2012, brought more bad news for Dell: revenue dropped 11% from the prior year, and EPS was down 28%. During this period when Dell was trying to sell its long-term vision without success, it kept failing the quarterly tests on which so many market analysts focus. By way of example, this was the sixth of the past seven quarters that revenue fell below consensus estimates. As research analysts lowered their price targets out of concern for the future of the PC industry and growing skepticism about Dell's turnaround strategy, even CFO Brian Gladden acknowledged that "[m]anagement projections appear optimistic given valuation & sell-side estimates of Dell future value." The Committee enlisted Boston Consulting Group ("BCG") to formulate independent projections for the Company.

By December 3, 2012, KKR withdrew its proposal as it was unable to "get [its] arms around the risks of the PC business."

For his part, Mr. Dell remained open "to join up with whoever" and was willing to supply as much equity as necessary for a transaction. To restore competition to the process once KKR dropped out, the Committee asked another PE heavyweight, Texas Pacific Group ("TPG"), who had recently invested in Dell's down-market rival Lenovo, to explore an acquisition. Though TPG signed a confidentiality agreement, obtained access to the data room, "spent a good deal of resources on it," and its leaders sat through presentations by Dell management, the PE firm reported to the Committee on December 23, 2012, that it decided not to submit a bid as "cash flows attached to the PC business were simply too uncertain, too unpredictable to establish an investment case."

By January 24, 2013, three additional parties had expressed a desire to explore a deal. GE Capital, a "strategic party," told Evercore that it was interested in buying the Dell Financial Services business for approximately the book value of its assets, between $3.5 and $4 billion. Blackstone also called Evercore with a heads-up that it anticipated exploring a Dell deal during the go-shop and "seeking assurances that any definitive

agreement the Company may be considering entering into would provide for a meaningful go-shop process." Last, Southeastern sought to enter into a confidentiality agreement and start reviewing the Company's confidential information.

News that Dell was exploring a strategic transaction had been leaking out since December, and Evercore reasoned that "if there were any people out there who were actively interested, there was a good chance they would have already come forward."

For its part, Silver Lake remained interested in a deal through it all. Over the course of negotiations, the Committee persuaded Silver Lake to raise its offer six times from its initial proposal of $11.22-to-$12.16 per share. It helped that, after the Board resolved to seek $13.75 per share and settle for no less than $13.60 per share, Mr. Dell agreed to accept a lower price to roll over his shares than unaffiliated stockholders were to receive. On February 3, Silver Lake presented the Committee two options greater than its existing $13.50 per share offer: either (i) $13.60 per share if it allowed the Company to continue its regular quarterly dividend payment through closing, or (ii) $13.75 all-cash with no additional dividends. After the Committee told Silver Lake that $13.60 would not suffice under the first alternative, Silver Lake boosted the cash component to $13.65 per share on February 4, its "best and final offer."

The Committee met with its financial advisors on the afternoon of February 4: both Evercore and JPMorgan indicated that they considered $13.65 per share fair to the unaffiliated stockholders from a financial point of view. The Committee recommended that the Board accept Silver Lake's offer, and, aside from Mr. Dell, who was not present, the Board unanimously adopted resolutions approving the transaction. The next morning, February 5, 2013, the Company and three entities affiliated with Silver Lake and Mr. Dell (collectively the "Buyout Group") entered into the merger agreement dated February 5, 2013 (collectively with amendments, the "Merger Agreement"), and they publicly announced the planned transaction.

Mr. Dell signed a voting agreement wherein he pledged that he and his affiliates would vote their shares in proportion to the number of unaffiliated shares that vote for either (i) a "Superior Proposal" as defined in the Merger Agreement which, if available, would terminate the Merger Agreement; or (ii) the adoption of the Merger Agreement if the Board changed its recommendation. This meant that any outside bidder who persuaded stockholders that its bid was better would have access to Mr. Dell's votes, eliminating one of the key problems other bidders may face when there is a CEO with material voting power.

The transaction contemplated that Mr. Dell would roll over his shares at $13.36 per share and invest up to $500 million in additional equity and that an affiliate of his would invest up to $250 million in additional equity. This transaction structure would give Mr. Dell a 74.9% stake in the Company post-closing, and Silver Lake a 25.1% stake.

The Merger Agreement also provided for a forty-five-day go-shop period ending March 23, 2013; a one-time match right for the Buyout Group available until the stockholder

vote; and termination fees of $180 million if the Company agreed to a Superior Proposal as defined in the Merger Agreement that materialized during the go-shop period, or $450 million if the Company agreed to a non-Superior Proposal or to bids produced after the go-shop period.

Led by Evercore, the go-shop period began on February 5, 2013. Within ten days, Evercore had surveyed the interest of sixty parties, including Blackstone and Hewlett-Packard ("HP"), the two parties that Evercore had identified as Dell's top prospects for a deal aside from the Buyout Group.

Meanwhile, the Company's first quarter results for Fiscal 2014, released May 16, 2013, still failed to demonstrate that Dell's turnaround strategy had legs as net income fell 79% from the previous year, and GAAP earnings per share were down 81%. Bernstein

Research highlighted that Dell's enterprise solutions and services segment had "woeful" margins, "well below industry peers." The Company's CFO Brian Gladden did not object to that assessment and wrote in an email to Dell's senior leadership team that they needed to have "some very serious conversations . . . about the trajectory of the business and our growth/profitability plans. It's not apparent that the shift to growth will bring profit and cash in the short or long term . . . . We cannot support the current opex [operating expense] structure with these results."

The Board arranged for a stockholder vote on the merger to occur at a special meeting on July 18, 2013. The definitive proxy statement filed May 31, 2013, explained that the Committee decided to recommend the transaction with Silver Lake as fair to unaffiliated stockholders because it involved, among other things: (i) the certainty of cash consideration; (ii) a 37% premium over the Company's ninety-day-average unaffected trading price of $9.97; and (iii) a 25% premium over its one-day unaffected trading price of $10.88. In evaluating the transaction's fairness, the Committee "believ[ed] that the trading price of the Common Stock at any given time represent[ed] the best available indicator of the Company's going concern value at that time, so long as the trading price

at that time is not impacted by speculation regarding the likelihood of a potential transaction."

At the special meeting held September 12, 2013, 57% of all Dell shares approved the Merger (70% of the shares present at the meeting). The Merger closed October 29, 2013, and the shares of non-dissenting Dell stockholders were converted into $13.75 per share in cash [SBJ note: the deal had been sweetened by $0.10 per share]. However, holders of 38,765,130 shares of Dell common stock demanded appraisal.

The four-day appraisal trial in October 2015 featured 1,200 exhibits, seventeen depositions, live testimony from seven fact witnesses and five expert witnesses, a 542-paragraph-long pre-trial order, and 369 pages of pre- and post-trial briefing. Petitioners argued that, as demonstrated through their expert's DCF analysis, the fair value of the Company's common stock at the effective time of the Merger was actually $28.61 per share—more than double the deal price of $13.75. If this valuation were correct, the Buyout Group obtained Dell at a $26 billion discount to its actual value. In contrast, Dell maintained that its DCF analysis yielding a $12.68 per share valuation was a more appropriate approximation of fair value, but that, in light of the uncertainties facing the PC industry, fair value could be as high as the deal price (but not greater).

The Court of Chancery acknowledged that "[t]he consideration that the buyer agrees to provide in the deal and that the seller agrees to accept is one form of market price data, which Delaware courts have long considered in appraisal proceedings." However, the court believed that flaws in Dell's sale process meant that the deal price of $13.75 should not be afforded any weight here since it was "not the best evidence of [the Company's] fair value." Accordingly, the trial court disregarded both Dell's pre-transactional stock price and the deal price entirely.

The Court of Chancery identified three crucial problems with the pre-signing phase of the sale process that contributed to its decision to disregard the market-based indicators of value.

First, the primary bidders were all financial sponsors who used an LBO pricing model to determine their bid prices—meaning that the per-share deal price needed to be low enough to facilitate an IRR of approximately 20%. As the court saw it, the prospective PE buyers, the Buyout Group, Mr. Dell, and the Committee never focused on determining the intrinsic value of the Company as a going concern.

Second, the trial court believed that Dell's investors were overwhelmingly focused on short-term profit, and that this "investor myopia" created a valuation gap that purportedly distorted the original merger consideration of $13.65. Thus, under the Court

of Chancery's logic, the efficient market hypothesis—which teaches that the price of a company's stock reflects all publicly available information as a consensus, per-share valuation—failed when it came to Dell, diminishing the probative value of the stock price. This phenomenon also allegedly depressed the deal price by anchoring deal negotiations at an improperly low starting point.

Third, the trial court concluded that there was no meaningful price competition during the pre-signing phase as, at any given time during the pre-signing phase, there were at most

two private equity sponsors competing for the deal, creating little incentive to bid up the deal price. The trial court especially faulted the Committee for declining to reach out to potential strategic bidders, such as HP, during the pre-signing phase, leaving the financial sponsors who were engaged without the incentive "to push their prices upward to pre-empt potential interest from that direction." According to the trial court, large private equity buyers such as those engaged here are notoriously averse to topping each other, and without the specter of a strategic buyer, the Committee lacked "the most powerful tool that a seller can use to extract a portion of the bidder's anticipated surplus"—the "threat of an alternative deal."

Next, the trial court evaluated the post-signing go-shop process, where it identified several additional issues that it believed further contributed to a deal price that fell short of fair value. Though two additional proposals to acquire the Company emerged during the

go-shop period, from Blackstone and Icahn, the trial court dismissed their import given that these prospective buyers also operated within the "confines of the LBO model," and that the deal price ultimately increased by just 2% over the original merger consideration of $13.65 per share as a result of this go-shop.

Further, the trial court observed that the deal's structure as an MBO imposed several additional, supposedly insurmountable impediments to Dell's ability to prove at trial that the deal's "structure in fact generated a price that persuasively established the Company's fair value." The trial court emphasized that, to prove a go-shop's worth, it is crucial to show that prospective rival bidders had a "realistic pathway to success" so as to justify the time, expense, and harm to professional relationships that might result from pursuing an offer. Though the trial court recognized that the "relatively open" structure of the Committee's go-shop "raised fewer structural barriers than the norm," the court believed such openness could not obviate the issues imposed by features "endemic to MBO go-shops," which "create a powerful disincentive for any competing bidder—and particularly competing financial bidders—to get involved." These features include a so-called "winner's curse" and the management team's inherent value to the Company.

The concept of a "winner's curse" reflects the notion that "incumbent management has the best insight into the Company's value, or at least is perceived to have an informational advantage," so if a financial buyer is willing to outspend management to win a deal, it must be overpaying because it must have overlooked some piece of information that dissuaded management from bidding as much. Further, the trial court inferred that "Mr. Dell's unique value and his affiliation with the Buyout Group were negative factors that inhibited the effectiveness of the go-shop process," despite evidence that suggested that neither Blackstone nor Icahn—nor anyone else, for that matter—believed that Mr. Dell's continued involvement with the Company was essential. Moreover, Mr. Dell appeared willing to work with any viable party.

In light of these apparent flaws in the sale process, both pre- and post-signing, the trial court found that the Company failed to establish that "the sale process offers the most reliable evidence of the Company's value as a going concern." Moreover, the Court of Chancery decided that "[b]ecause it is impossible to quantify the exact degree of the sale process mispricing," it was going to discount the final merger consideration of $13.75 entirely—giving it no weight when determining fair value.

But, given that the trial court deemed it "illogical" to believe that another bidder would not have topped the Buyout Group's offer if the Company were actually worth the $28.61 per share advocated by the petitioners, the Court of Chancery rejected petitioners' DCF and arrived at its "fair value" determination of $17.62 per share through its own DCF analysis, using a mix of the inputs proposed by the petitioners' and the Company's experts and adjustments of its own.

The Company argues that the trial court committed legal error and abused its discretion in failing to assign *any* weight to the deal price. On both fronts, the Company claims that the trial court erred by disregarding Section 262(h)'s requirement that it "take into account all relevant factors" in determining fair value.

The Company articulates three reasons why it believes the trial court committed legal error. First, the Company argues that there is no requirement under Delaware law that the deal price be the "most reliable" or "best" evidence of fair value in order for it to be given any weight. Second, the Company posits that there is no requirement under Delaware law that the Court of Chancery disregard the deal price entirely if it cannot unequivocally quantify the precise amount of sale process mispricing. Third, the Company contends that the trial court erred in fashioning what seems akin to a bright-line rule that the deal prices in MBO transactions are distorted and should be disregarded. Dell states

that imposing such a rule would be "inconsistent with the flexible nature of the appraisal inquiry."

Moreover, the Company notes that the trial court's conclusions underpinning its decision to disregard deal price do not follow from the facts as found. In particular, the Company maintains that the trial court lacked a basis for finding that: the market for Dell's stock was inefficient due to the alleged short-term focus of the Company's investor base, yielding a valuation gap between Dell's market value and its intrinsic value; the pre-signing phase lacked "meaningful price competition" because those involved in the sale process were fixated on determining a deal price that would generate the requisite IRR under the LBO model, and there were no strategic bidders involved; banks were reluctant to help finance the deal through debt, limiting the available leverage and therefore capping the deal price; the emergence of "topping bids" underscored the unfairness of the

original merger consideration; and features endemic to MBO go-shops additionally distorted the relevance of the deal price. Thus, the Company argues that the trial court's entire reasoning for assigning no weight to the deal price was based either on flawed premises or on theoretical constructs that lack support in this factual record.

In response, the petitioners argue that the Court of Chancery *did* consider "all relevant factors"—including the deal price—in determining fair value as the Court of Chancery outlined a litany of reasons why the sale process distorted the deal price's worth as a proxy for fair value. Petitioners contend that the Company is itself the party advocating for an "inflexible bright-line rule" given that the Company seems to suggest that the Court of Chancery was required to "assign some mathematical weight to the deal price" in determining fair value. The petitioners observe that this Court has previously rejected that formalism in light of the language of Section 262.

We agree with petitioners that the trial court *did consider* all relevant factors

presented, including Dell's stock price and deal price. But we reverse because the

reasoning behind the trial court's decision to give no weight to any market-based measure of fair value runs counter to its own factual findings. After reviewing our appraisal statute and accompanying jurisprudence, we explore why the facts fail to support the Court of Chancery's reasoning for disregarding, in particular, the deal price. To the extent the trial court can justify giving any weight to its DCF analysis on remand, we conclude that, for the most part, the trial court did not abuse its discretion as to the asserted errors.

We have explained that the court's ultimate goal in an appraisal proceeding is to determine the "fair or intrinsic value" of each share on the closing date of the merger. To reach this per-share valuation, the court should first envisage the entire pre-merger company as a "going concern," as a stand alone entity,and assess its value as such. "[T]he corporation must be viewed as an on-going enterprise, occupying a particular market

position in the light of future prospects." The valuation should reflect the "'operative reality' of the company as of the time of the merger."

Because the court strives "to value the *corporation* itself, as distinguished from a specific fraction of its *shares* as they may exist in the hands of a particular shareholder," the court should not apply a minority discount when there is a controlling stockholder. Further, the court should exclude "any synergies or other value expected from the merger giving rise to the appraisal proceeding itself."

Then, once this total standalone value is determined, the court awards each petitioning stockholder his pro rata portion of this total—"his proportionate interest in [the] going concern" plus interest.

By instructing the court to "take into account all relevant factors" in determining fair value, the statute requires the Court of Chancery to give fair consideration to "proof of value by any techniques or methods which are generally considered acceptable in the financial community and otherwise admissible in court." Given that "[e]very company is different; every merger is different," the appraisal endeavor is "by design, a flexible process."

relevant factors' and determine the going concern value of the underlying company." In *DFC*, we again rejected an invitation to create a presumption in favor of the deal price. Even aside from the statutory command to consider all relevant factors, we doubted our ability to craft the precise preconditions for invoking such a presumption.

As such, "the trial of an appraisal case under the Delaware General Corporation Law presents unique challenges to the judicial factfinder." And this task is complicated by "the clash of contrary, and often antagonistic, expert opinions of value," prompting the trial court to wade through "widely divergent views reflecting partisan positions" in arriving at its determination of a single number for fair value.

In the end, after this analysis of the relevant factors, "[i]n some cases, it may be that a single valuation metric is the most reliable evidence of fair value and that giving weight to another factor will do nothing but distort that best estimate. In other cases, it may be necessary to consider two or more factors." Or, in still others, the court might

weight among a variety of methodologies. But, whatever route it chooses, the trial court must justify its methodology (or methodologies) according to the facts of the case and relevant, accepted financial principles.

Given the human element in the appraisal inquiry—where the factfinder is asked to choose between two competing, seemingly plausible valuation perspectives, forge its own, or apportion weight among a variety of methodologies—it is possible that a factfinder, even the same factfinder, could reach different valuation conclusions on the same set of facts if presented differently at trial. There may be no perfect methodology for arriving at fair value for a given set of facts, and the Court of Chancery's conclusions will be upheld

if they follow logically from those facts and are grounded in relevant, accepted financial principles. “To be sure, “fair value” does not equal “best value.”

On the other hand, we also agree with the petitioners that there is no requirement that the court assign some mathematical weight to the deal price, and that the court fulfilled its statutory obligation to take into account the deal price. The trial court’s thorough examination of Dell’s stock market dynamics and sale process demonstrates its consideration of these factors. But we reverse because there is a dissonance between the key underpinnings of the decision to disregard the deal price and the facts as found, and this dissonance distorted the trial court’s analysis of fair value.

The three central premises that the Court of Chancery relied upon to assign no weight to the deal price were flawed. First, the court believed that a “valuation gap” existed between Dell’s stock price and the Company’s intrinsic value, and this conclusion—contrary to the efficient market hypothesis—led it to hypothesize that the bidding over Dell as a company was anchored at an artificially low price that depressed the ultimate deal price below fair value. Second, the court suggested that the lack of strategic buyers in the sale process—and, accordingly, the involvement of only private equity bidders—also pushed the deal price below fair value. Third, the court concluded that several factors endemic to MBO go-shops further undercut the deal price’s credibility. We consider each of these premises in turn and find them untenable in view of the Court of Chancery’s own findings of fact as considered in light of established principles of corporate finance. Without these premises, the trial court’s support for disregarding the deal price collapses.

Accordingly, the trial court’s reliance on them as a basis for granting no weight to the market-based indicators of value constituted an abuse of discretion meriting reversal.