

NOT SO SWEET – NO APPRAISAL RIGHTS FOR DR PEPPER STOCKHOLDERS

The Delaware Court of Chancery recently delivered the latest in a line of decisions refining the application of statutory stockholder appraisal rights in M&A transactions. In *City of North Miami Beach General Employees' Retirement Plan v. Dr Pepper Snapple Group, Inc.* (Del. Ch. June 1, 2018) (“*Dr Pepper*”), the court declined to extend the Delaware appraisal statute to apply to a change-of-control transaction that technically fell outside the strict parameters of the statute – even though the transaction economically resembled a typical public company acquisition.

BACKGROUND

The structure of the Dr Pepper transaction was somewhat uncommon. From an economic standpoint, Dr Pepper was being acquired by the parent of Keurig Green Mountain Inc. (“*Keurig*”). However, the transaction was structured such that a merger sub of Dr Pepper would merge into Keurig, with Keurig surviving as a wholly owned subsidiary of Dr Pepper. The stock of Keurig would be converted into the right to receive shares of newly issued Dr Pepper common stock, and Keurig would declare a cash dividend to Dr Pepper, which Dr Pepper would in turn distribute to its pre-transaction stockholders. Upon completion of the merger, the pre-transaction Dr Pepper stockholders would hold 13% of the post-merger company, while the pre-transaction equity holders of Keurig would hold the remaining 87%. The proxy statement filed by Dr Pepper stated that the Dr Pepper stockholders were not entitled to appraisal rights under Section 262 of the Delaware General Corporation Law. Stockholder plaintiffs brought suit claiming, among other things, that Dr Pepper stockholders should be entitled to appraisal rights.

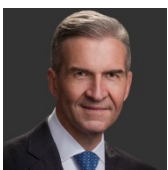
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The court noted that under Section 262(b), stockholders are entitled to appraisal rights only for the shares of stock of a company that is “actually being merged or combined and not the parent of such an entity.” In addition, the court noted that the appraisal statute contemplates that the shares for which appraisal is sought must be relinquished in the merger. Since Dr Pepper was not actually a party to the merger itself, and since Dr Pepper stockholders would retain their shares following the transaction, the court held that the stockholders would not be entitled to appraisal rights under the Delaware appraisal statute.

OUR VIEW

In *Dr Pepper*, the Court of Chancery picks up where the Delaware Supreme Court left off following a pair of rulings last year that are generally expected to reduce the volume of appraisal actions pursued by opportunistic plaintiffs seeking to benefit from high statutory interest rates and the significant cost of defending such cases. In *DFC Global Corp. v. Muirfield Value Partners, L.P.* (Del. Aug. 1, 2017) (“*DFC*”) and *Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd.* (Del. Dec. 14, 2017) (“*Dell*”), the Delaware Supreme Court signaled that when determining “fair value” in an appraisal proceeding, Delaware courts should give greater consideration to the deal price where the record shows that the transaction resulted from an arm’s-length, competitive and fair sale process and where market fundamentals support the deal price.

In exercising restraint by refusing to “judicially rewrite” the appraisal statute, the court in *Dr Pepper* has provided additional clarity to dealmakers anticipating potential appraisal claims. As certainty and predictability are of paramount importance in the context of M&A transactions, decisions such as this potentially promote deal activity. We would welcome the opportunity to discuss with you the court’s decision in *Dr Pepper* and its implications in greater detail.



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