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# Delaware Supreme Court Refuses to Establish a Presumption Favoring Deal Price in Statutory Appraisal Proceedings

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# DELAWARE CORPORATE LAW BULLETIN

## Delaware Supreme Court Refuses to Establish a Presumption Favoring Deal Price in Statutory Appraisal Proceedings

*Robert S. Reder**
*Blake C. Woodward***

*Requires trial court (on remand) to justify its decision to give equal weight to deal price, DCF analysis, and comparable companies analysis in determining fair value of target company*

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## INTRODUCTION

Section 262 of the Delaware General Corporation Law ("*DGCL § 262*") grants dissenting target company stockholders an opportunity to reject the cash consideration otherwise payable to them in a merger and demand instead payment of the "fair value" of their shares.[1] DGCL § 262 permits these dissenting stockholders to ask the Delaware Court of Chancery (the "*Chancery Court*") to determine the "fair value" of their shares.[2] In its fair value determination, the Chancery Court is instructed by DGCL § 262(h) to consider "all relevant factors," a vague directive that leaves various lines of inquiry available to the courts.[3] A higher or even equivalent valuation is not guaranteed to the dissenters; in fact, fair value may be found to be lower than the negotiated deal price. One important caveat: any synergistic gains, or "value arising from the accomplishment or expectation of the merger," may not be considered in the Chancery Court's determination.[4]

We have seen a significant rise in the frequency of appraisal proceedings in recent years, with an accompanying increase in the cash value of the claims.[5] This phenomenon relates directly to the intervention of so-called appraisal arbitrageurs, activist hedge funds and other avant-garde investors seeking to profit from use of the appraisal remedy.[6] The increased frequency of appraisal proceedings has in turn triggered a heightened focus on the Chancery Court's interpretation and implementation of DGCL § 262. Although numerous decisions have favored the deal price as the basis for determining fair

1. DEL. CODE ANN., tit. 8 § 262 (West). To qualify for an appraisal, a dissenting stockholder must not have voted in favor of the merger. Appraisal rights are not available under § 262(b) to holders of publicly-traded stock when the deal consideration consists entirely of publicly-traded stock of another entity.

2. *Id.*

3. *Id.*

4. *Id.*

5. *See* Charles R. Korsmo & Minor Myers, *Appraisal Arbitrage and the Future of Public Company M&A,* 92 WASH. U.L. REV. 1551, 1568 (2015); Robert S. Reder & Loren D. Goodman, *Dell Appraisal Proceedings: Delaware Court of Chancery Finds Price Payable in Management Buyout Understates "Fair Value" by 28%*, 70 VAND. L. REV. EN BANC 11, 12 (2016).

6. *See* Reder & Goodman, *supra* note 5, at 12 (attributing the rise in appraisal proceedings to the increased activity of appraisal arbitrageurs, hedge funds and other sophisticated investors seeking profit).

value,[7] others have rejected that approach under the particular facts of the case.[8] In 2010, in *Golden Telecom, Inc. v. Global GT LP* ("*Golden Telecom*"),[9] the Delaware Supreme Court (the "*Court*") declined to adopt "a standard requiring conclusive or, in the alternative, presumptive deference to the merger price in an appraisal proceeding."[10]

Against this backdrop, the Court recently heard an appeal from the Chancery Court's determination of fair value in an appraisal proceeding brought by dissenting stockholders of DFC Global Corporation ("*DFC*" or the "*Company*"), a target company in a leveraged buyout sponsored by a private equity fund.[11] The Court, in a detailed 85-page opinion authored by Chief Justice Leo E. Strine Jr., criticized the Chancery Court's fair value determination and methodology, but resisted once again establishing a presumption in favor of the negotiated deal price, even when presented with an exemplary sales process.[12] While acknowledging that economic principles, when applied to the specific circumstances of the case, suggest that the "best evidence of fair value was the deal price,"[13] the Court nevertheless opined that DGCL § 262(h)'s instruction to courts to look "at all relevant factors" negates a presumption favoring deal price.[14] The Chief Justice instructed the Chancery Court, on remand, to better explain its decision to give equal weight to the negotiated deal price and two other methodologies in determining the fair value of the dissenters' shares.

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7. *See e.g.*, In re Appraisal of Ancestry.com, Inc., C.A. No. 8173-VCG, 2015 WL 399726, at *1, *23 (Del. Ch. Jan. 30, 2015); Merion Capital LP v. BMC Software, Inc., C.A. No. 8900-VCG, 2015 WL 6164771, at *1 (Del. Ch. Oct. 21, 2015), *judgment entered*, (Del. Ch. Nov. 3, 2015); Huff Fund Inv. P'ship v. CKx, Inc., C.A. No. 6844-VCG, 2013 WL 5878807, at *1, *13 (Del. Ch. Nov. 1, 2013), *judgment entered,* (Del. Ch. June 17, 2014).

8. *See* In re Appraisal of Dell, Inc., C.A. No. 9322-VCL, 2016 WL 3186538, at *1 (Del. Ch. May 31, 2016). Vice Chancellor Laster rejected a negotiated premium price in a management-led buyout of Dell Inc. as an indicator of fair value; instead, he conducted his own discounted cash flow analysis which resulted in a nearly $4 dollar per share difference in values between the deal price and judicially determined fair value. This difference in dollar amount per share meant the deal was undervalued by almost $6 billion. *See* Reder & Goodman, *supra* note 5. This decision was recently reversed and remanded back to the *Chancery Court in Dell, Inc. v. Magnetar Global Event Driven Master Fund Ltd*, No. 565, 2016, 2017 WL 6375829 (Del. December 14, 2017).

9. 11 A.3d 214 (Del. 2010).

10. *See id.* at 216.

11. *See* DFC Global Corporation v. Muirfield Value Partners, L.P., 172 A.3d 346 (Del. 2017).

12. *See id.* at 349.

13. *Id.*

14. *See id.* at 364; *see also Golden Telecom*, 11 A.3d 214, 217 (Del. 2010).

# I. FACTUAL BACKGROUND

## *A. The Lone Star Transaction*

DFC, which "provides alternative consumer financial services, predominately payday loans,"[15] grew rapidly over the past two decades through a series of acquisitions worldwide, resulting in more than 1,500 locations in ten countries and a strong internet business.[16] DFC's three main markets are the United States, Canada, and the United Kingdom, where DFC undertook its most aggressive expansion efforts.[17]

DFC's widely-held, publicly-traded stock had a "deep public float."[18] The daily trading volume and price, like that of other payday lenders, was notoriously reactive both to information regarding the Company's performance and to developments in the industry, including regulatory measures, and the overall economy.[19]

DFC's rapid growth left it highly leveraged, with almost $1.1 billion of debt versus $367.4 million in equity.[20] DFC also experienced increasing risk from expanding regulations in its markets, particularly the United Kingdom.[21] In light of these "headwinds," DFC engaged Houlihan Lokey Capital Inc. ("*Houlihan*") in Spring 2012 to explore a sale. Throughout the following year, Houlihan reached out to numerous financial sponsors along with three potential strategic purchasers. None expressed real interest. During this period, DFC also explored, but was forced to abandon due to a lack of investor interest, a $600 million debt refinancing.[22] Not until Fall 2013 did three serious financial buyers emerge: J.C. Flowers & Co. LLC ("*Flowers*"), Crestview Partners ("*Crestview*"), and Lone Star Funds ("*Lone Star*").

DFC management provided each potential purchaser with 2014 financial projections showing an adjusted EBITDA of $219.3 million. Following Crestview's early exit, Flowers and Lone Star submitted nonbinding indications of interest at $13.50 and $12.16 per share,

15. *See DFC Global Corporation,* 172 A.3d at 351.
16. *Id.*
17. *See id.* at 351-52.
18. *See id.* at 352.
19. *See id.* at 352–53.
20. *Id.* at 353.
21. *Id.* at 353-54. These included: Canada's new system that allowed provinces, instead of the central government, to regulate payday loan providers; the Dodd-Frank Act, including the Consumer Financial Protection Act ("*CFPA*"), within the United States, which created the Consumer Financial Protection Bureau that found DFC to be in violation of the CFPA; and, the United Kingdom's Office for Fair Trading (later known as the Financial Conduct Authority) creating rules that restricted the use of continuous payment authorities, placed a new cap to limit borrowers' total cost of credit and, later, restricted rollovers to a maximum of two per loan.
22. *See id.* at 355.

respectively.[23] After a second round of financial projections reflected a 16.8% decrease in adjusted EBITDA, Lone Star reduced its offer to $11 per share, citing the threatening United Kingdom regulations and stock price volatility.[24] Soon after, Flowers dropped out, also pointing to DFC's significant regulatory exposure.

Subsequently, DFC granted exclusive negotiating rights to the lone remaining bidder, Lone Star, and released two more rounds of financial projections, each more dismal than the last. Ultimately, Lone Star dropped its offer to $9.50 per share.[25] On April 1, 2014, the DFC board approved a merger with Lone Star, calling for each share of Company stock to be converted into $9.50 per share. The following day, DFC announced the transaction as well as a significant cut in its earnings outlook for the year.[26] The transaction closed in mid-June.

### *B. The Appraisal Proceeding*

Various dissenting stockholders petitioned the Chancery Court for an appraisal of the fair value of their shares. In the resulting proceeding, the Chancery Court observed the large discrepancy "between the experts' estimates of fair value[,] driven in large part by disagreements about the 'proper inputs and methods' for the discounted cash flow model."[27]

The petitioners relied solely on a professional valuation expert using only a discounted cash flow model in determining DFC's fair value to be $17.90 a share, an 88% upturn over the deal price. This expert also completed, but declined to give any weight to, a comparable companies analysis.[28] In contrast, DFC's expert gave equal weight to a discounted cash flow model, valuing DFC at $7.81 per share, and a comparable companies analysis, valuing the Company at $8.07 per share, resulting in a fair value of $7.94 per share. This expert also posited that the $9.50 deal price was a reliable indicator of fair value.

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23. *Id.*

24. *See id.* The other stated reasons were DFC's own downward revisions, reduced availability of transaction financing, and the weak Canadian dollar.

25. *Id.* at 356. The fourth round of projections represented a 16.1% decrease from the second round projections.

26. *Id.* The announcement slashed the 2014 earnings outlook from $170-200 million to $151-156 million. Within a week, S&P placed DFC's long-term "B" rated debt on the "CreditWatch with negative implications" list. *Id.* at 356-57.

27. *See id.* at 358.

28. *See id.* at 357 n. 52 (noting the petitioner's expert didn't afford any weight to the comparable companies analysis methodology in his fair value determination because the companies used were insufficiently similar to DFC).

In light of the wide gap between the competing experts' DCF analyses, the Chancery Court constructed its own discounted cash flow model that indicated a fair value of $13.07 per share.[29] The Chancery Court then assessed the competing comparable companies analyses and determined the $8.07 value indicated by DFC's expert was reasonable. Finally, the Chancery Court evaluated the relevancy of the $9.50 per share deal price, noting that "[t]he merger price in an arm's-length transaction that was subjected to a robust market check is a strong indication of fair value."[30] The Chancery Court went on to observe, however, that deal price is only a reliable indicator of fair value if it is the product of a healthy sales process. In this case, the Chancery Court was concerned with two potential infirmities: *first*, that the market did not fully reflect DFC's potential regulatory issues, and *second*, that "Lone Star's status as a financial sponsor, moreover, focused its attention on achieving a certain internal rate of return and on reaching a deal within its financing constraints, rather than on DFC's fair value."[31] These concerns led the Chancery Court to find the deal price to be but *one measure* of DFC's value.[32]

Ultimately, the Chancery Court found that each of the three fair value inputs, while flawed, provided "meaningful insight into DFC's value."[33] This led the Chancery Court to apply a weighting of one-third to each, thereby arriving at a fair value of $10.30 per share.[34] Both sides appealed.

## II. CHIEF JUSTICE STRINE'S ANALYSIS

On appeal, DFC argued that the Court "should establish, by judicial gloss, a presumption that in certain cases involving arm's-length mergers, the price of the transaction giving rise to appraisal

29. *See id.* at 358-59.

30. *In re Appraisal of DFC Global Corp.*, C.A. No. 10107-CB, 2016 WL 3753123, *20 (Del. Ch. 2016).

31. *Id.* at *22.

32. *Id.* at *21.

33. *Id.* at *23.

34. *DFC Global Corporation*, 172 A.3d at 359–362. The Chancery Court initially calculated the fair value of DFC to be: $9.50 (deal price) + $8.07 (comparable companies analysis) + $13.07 (discounted cash flow analysis) ÷ 3 = $10.21 per share. However, DFC moved for reargument due to the Chancery Court's mistaken use of the wrong working capital values within its discounted cash flow analysis. In addition, the petitioners argued for a "codependent relationship" between the projected revenues and working capital needs, *i.e.* the high-level requirement for working capital should necessitate a corresponding higher projected growth rate. After correcting the error regarding the working capital values and accepting the petitioners' argument for a higher perpetuity growth rate, the Chancery Court's discounted cash flow analysis value within its equation shifted to $13.33. This resulted in the $0.09 higher award after the reargument. *Id.*

rights is the best estimate of fair value."[35] Alternatively, among other arguments,[36] DFC claimed the Chancery Court abused its discretion in affording equal weight to each of the deal price, the comparable companies analysis, and the discounted cash flow analysis.[37] For their part, petitioners attacked the Chancery Court's decision to afford any weight at all to the comparable companies analysis, arguing that "primary, if not sole, weight" should have been given to the discounted cash flow analysis.[38]

### *A. No "Judicial Presumption" for Deal Price*

Chief Justice Strine found that the Court's own precedent rejects creation of conclusive or presumptive deference to deal price in appraisal proceedings.[39] Instead, the trial court is instructed to respect the key language of DGCL § 262 that stockholders are entitled to an appraisal of fair value taking into account "all relevant factors."[40] Specifically, because the concept of "fair value" entails a firm's going concern value to stockholders, the trial court must, when determining fair value, conduct an "independent evaluation . . . even in the face of a pristine, unchallenged transactional process."[41] This view of the legislature's intended goal led the Court to adopt a "more liberal, less rigid and stylized, approach to the valuation process," one in which evidence of value can be gained via "any techniques or methods which are generally considered acceptable in the financial community."[42]

DFC's best hope in this regard was to convince the Court not only of the strength of its economic argument, but also of the ease with

35. *Id.* at 348.

36. DFC also argued "that the Court of Chancery erred by markedly increasing the perpetuity growth rate it used in its discounted cash flow model after recognizing on reargument that it had used the wrong working capital figures in its original model. DFC contends that there was no record evidence justifying this sizable increase in the perpetuity growth rate." *Id.* at 362. *See infra* note 39.

37. *Id.* at 363.

38. *Id.* at 350.

39. *Id.* at 348; *see Golden Telecom*, 11 A.3d 214, 217 (Del. 2010). The statutory phrase "all relevant factors" was also a key feature of the Court's decision in *Weinberger v. UOP, Inc.*, 457 A.2d 701 (Del. 1983) in eliminating the Delaware Block Method as the sole methodology for valuation in appraisal proceedings. The Delaware Block Method was a combination of three generally accepted methods for valuation: the asset approach, the market approach, and the earnings approach. Each was used separately under the method to calculate a value for the entire firm. Then, a percentage weight would be assigned to each of the three values based on its significance to the firm's nature of business. The weighted average of the three valuations was then deemed to be the appraised fair value of the firm under this method.

40. *Id.* at 348 (quoting DEL. CODE ANN., tit. 8 § 262 (West)).

41. *Id.* at 364 (quoting *Golden Telecom*, 11 A.3d at 217–218).

42. *Id.* at 366 (quoting *Weinberger*, 457 A.2d at 704, 713).

which the requisite pre-conditions for such a presumption could be identified. Chief Justice Strine rejected this approach, determining it would be too difficult to create precise pre-conditions given the unique factual aspects of each proceeding. Further, he saw little need for such a presumption given the Chancery Court's exemplary record in determining whether to give the deal price prominent, or even exclusive, weight in its fair value estimate.[43] Until the Delaware legislature sees fit to establish a presumption in favor of deal price, the Chief Justice did not believe it appropriate to ignore the pertinent statutory language.[44]

### *B. Value of Deal Price Produced by Competitive Bid Process*

Chief Justice Strine next turned to DFC's alternative argument that the deal price should be afforded significant weight in the fair value determination before the Court. The Company argued that deal price is the most reliable evidence of fair value from an economic point of view, at least so long as all interested bidders were given a fair opportunity to price and bid on the company in question.[45] The Chief Justice observed that this argument aligned with the accepted economic principle that finds it improbable that any individual, in possession of the same information as the rest of the market participants, would place a markedly different value on an asset that is more reliable than the "collective judgement of value embodied in a market price."[46] Siding with DFC, the Chief Justice could find no justification in the record or among reliable corporate finance and economic principles for the Chancery Court's decision to afford the deal price only one-third weight.

#### 1. Fair Value and the Strength of Deal Price

The Chief Justice observed that, as a practical matter, the most straightforward valuation methodology would be the price for which a company would sell when there is a "willing buyer and willing seller without any compulsion to buy."[47] Similarly, economists and corporate financial advisors alike would expect rational participants in a sales process to base their bids on the target company's ability to "generate

43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.* at 367 (citing RICHARD A. BREALEY ET AL., PRINCIPLES OF CORPORATE FINANCE 373 (2008)).
47. *Id.* at 369.

further free cash flows, and to discount that to present value."[48] Bids structured off these assessments, together with all other available market information, have distinct advantages over other valuation techniques. In particular, the Chief Justice noted that market-based prices grounded in the collective judgment of the entire market are inherently more reliable than a discounted cash flow analysis performed by one individual.[49] By contrast, "a singular discounted cash flow model is often most helpful when there isn't an observable market price."[50]

2. Role of Deal Price in DFC Appraisal

Turning to the facts before him, Chief Justice Strine observed that although the Chancery Court found the DFC "sales process was robust and conflict-free" and extended over a significant period of time,[51] it afforded the deal price only one-third weight based on two concerns: i) regulatory uncertainties out of DFC's control; and ii) Lone Star's status as a financial buyer focused on achieving an internal rate of return bounded by its financing constraints.[52] The Chief Justice dismissed both concerns:

*First*, he found no support in the economic literature suggesting the markets could not value regulatory risk.[53] In fact, the payday lending industry's history of close regulation dictated that the market's assessment of DFC's future cash flows took such regulatory risks into account. Indeed, the regulatory risks were known by equity analysts, equity buyers, debt analysts, debt providers and numerous other market participants, including the bidders.[54] Thus, the deal price resulting from the robust market check necessarily priced these risks into its valuation. The record itself demonstrated that the various potential buyers considered the regulatory risks, with Flowers specifically citing regulatory risk as the basis for its withdrawal from the sales process.[55]

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48. *Id.*

49. *Id.* at 370.

50. *See id*; *see also* JOSHUA ROSENBAUM & JOSHUA PEARL, INVESTMENT BANKING 109 (2009) ("[Discounted cash flow models are] an important alternative to market-based valuation techniques . . . . A [discounted cash flow model] is also valuable when there are limited (or no) pure play, peer companies or comparable acquisitions").

51. *DFC Global Corporation,* 172 A.3d at 372 (citing *In re Appraisal of DFC Global Corp.*, C.A. No. 10107-CB, 2016 WL 3753123 at *22 (Del. 2016)).

52. *See id.*

53. *See id.* at 372–73.

54. *Id.*

55. *See id.* at 374.

*Second*, the mere fact that Lone Star had a targeted rate of return was not out of the ordinary, as "all disciplined buyers, both strategic and financial, have internal rates of return that they expect in exchange for taking on the large risk of a merger."[56] The Chief Justice could find "no rational connection" between a buyer's focus "on hitting its internal rate of return" and "whether the price it pays as a result of a competitive process is a fair one," especially when objective factors support the price's fairness.[57] He also was not swayed by the Chancery Court's concern that the deal price's reliability was somehow impacted by lenders' reluctance to finance Lone Star's acquisition at a higher price, finding no reason to think that equity is undervalued simply because lenders fear getting paid back.[58] In short, "[t]he 'private equity carve out' that the Court of Chancery seemed to recognize, in which the deal price resulting in a transaction won by a private equity buyer is not a reliable indication of fair value, is not one grounded in economic literature or this record."[59]

On this basis, the Chief Justice opined that:

> [a]lthough there is no presumption in favor of the deal price, under the conditions found by the Court of Chancery, economic principles suggest that the best evidence of fair value was the deal price, as it resulted from an open process, informed by robust public information, and easy access to deeper, non-public information, in which many parties with an incentive to make a profit had a chance to bid.[60]

Absent any of "the sorts of flaws in the sale process that could lead one to reasonably suspect that the ultimate price paid by Lone Star was not reflective of DFC's fair value," the Chancery Court's "decision to give only one-third weight to the deal price . . . w[as] not supported by the record."[61]

### *C. Viability of Comparable Companies Analysis*

Petitioners' attack on the Chancery Court's analysis did not survive Chief Justice Strine's review. First, the Chief Justice concluded that the Chancery Court's decision to give weight to the DFC expert's comparable companies analysis was not an abuse of discretion,

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56. *Id.* at 375.

57. *See id.* at 375-76 (listing four objectives factors that bolster the price's fairness: "i) the failure of other buyers to pursue the company when they had a free chance to do so; ii) the unwillingness of lenders to lend to the buyers because of fears of being paid back; iii) a credit rating agency putting the company's long-term debt on negative credit watch; and iv) the company's failure to meet its own projections").

58. *See id.* at 376.

59. *Id.* at 350.

60. *Id.* at 349.

61. *See id.* at 376.

rejecting petitioners' contentions that: i) the Chancery Court unjustifiably relied on "trough years" for DFC's performance; ii) the analysis would have yielded very different results if single years had been used; and iii) none of the selected six "peer" companies were in fact comparable to DFC. Second, the Chief Justice disagreed that the "discounted cash flow model value should have been given predominant weight," with the deal price receiving "little, if any, weight."[62] In the Chief Justice's view, "there were ample reasons for the Chancellor to doubt the reliability of the discounted cash flow model on this record. It was therefore not an abuse of discretion for him to consider other factors in reaching a decision about DFC's fair value."[63]

### *D. Decision to Afford Equal Weight Must be Explained*

Finally, Chief Justice Strine criticized the Chancery Court's approach in affording one-third weight to each of the deal price, the comparable companies analysis, and the discounted cash flow model.[64] According to the Chief Justice:

> [I]n keeping with our refusal to establish a "presumption" in favor of the deal price because of the statute's broad mandate, we also conclude that the Court of Chancery must exercise its considerable discretion *while also explaining, with reference to the economic factors before it and corporate finance principles*, why it is according a *certain weight* to a certain indicator of value.[65]

The Chief Justice cautioned that each appraisal must be decided on its own merits. There may be cases in which "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."[66] Other cases may use "two or more factors."[67] In any event, the unique characteristics of each appraisal proceeding make it impossible to preemptively designate a set of rules. Accordingly, Chief Justice Strine directed the Chancery Court, on remand, "to explain its weighting in a manner that is grounded in the record before it. That did not happen here."[68]

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62. *See id.* at 386.

63. *See id.* at 388. Similarly, the Court was critical of the Chancery Court's ultimate discounted cash flow modeling. *See supra* notes 39 and 41. In this regard, the Court noted that "[s]imply given the Court of Chancery's own findings about the extensive market check, the value gap already reflected in the [Chancery C]ourt's original discounted cash flow estimate . . . should have given the [Chancery] Court doubts about the reliability of its discounted cash flow analysis." *Id.* at 379.

64. *See id.* at 388.

65. *See id.* (emphasis added).

66. *See id.*

67. *See id.*

68. *See id.*

## CONCLUSION

The recent rise in both appraisal proceedings and their accompanying claim values has brought the Court's interpretation of DGCL § 262 to the forefront. Any evaluation of *DFC Global* must be read against the backdrop of the intended purpose of appraisal rights. Chief Justice Strine offers perhaps the clearest insight:

> Capitalism is rough and ready, and the purpose of an appraisal is not to make sure that the petitioners get the highest conceivable value that might have been procured had every domino fallen out of the company's way; rather, it is to make sure that they receive fair compensation for their shares in the sense that it reflects what they deserve to receive based on what would fairly be given to them in an arm's-length transaction.[69]

Accordingly, in any appraisal proceeding, the goal must be to arrive at a value that represents the *fair value* of the dissenting shares, not to give stockholders a windfall, after an evaluation of *all relevant factors*.[70]

*DFC Global* reiterates first and foremost the Court's refusal in *Golden Telecom* to establish a presumption in favor of deal price as the most reliable indicator of fair value.[71] However, Chief Justice Strine offered new guidance on the role of deal price, insinuating that it may act as the most reliable indicator of fair value.[72] The Chief Justice indeed encourages the Chancery Court to give significant, if not dispositive, weight to deal price in an open, competitive, and arm's-length transaction with a robust market check.

Another key contribution of *DFC Global* is the explicit requirement placed on the Chancery Court, in any case, to provide a clear explanation of its use and weighting of various valuation factors.[73] Chief Justice Strine instructs the Chancery Court not only to provide an explanation, but to supplement its reasoning with specific references to the record before it and corporate finance principles.[74] There also seems to be an underlying assumption that, when the Chancery Court is faced with a choice between the deal price and a discounted cash flow analysis as the basis for a fair value determination, a sliding metric balancing the quality of the sales process with the reliability of the projections utilized in the discounted cash flow analysis ought to be employed. This aspect of *DCF Global* represents a clear directive to the Chancery Court that should provide more transparency in the valuation

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69. *Id.* at 370–371.
70. *See* DEL. CODE ANN., tit. 8 § 262 (West).
71. *See* 11 A.3d 214, 217 (Del. 2010).
72. *See DFC Global Corporation*, 172 A.3d at 349, 375-76.
73. *See id.* at 388.
74. *Id.*

process and help ensure the purpose of appraisal proceedings is achieved.