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Delaware Supreme Court Rejects Reliance on Trading Price in Appraisal Action; Orders Award of Deal Price Minus Synergies

In *Verition Partners Master Fund Ltd.* v. *Aruba Networks, Inc.*, the Delaware Supreme Court reversed the Court of Chancery's exclusive reliance on a pre-announcement stock trading price to determine "fair value" in a statutory appraisal action, reasoning the valuation methodology was inappropriate on the record presented. Instead, the Supreme Court directed the Court of Chancery to enter a judgment reflecting the deal price minus the synergy value shared with Aruba's stockholders, resulting in an increase to the appraisal award originally ordered by the Court of Chancery by approximately $2 per share. Despite this increase, the award remained approximately 20% less than the negotiated deal price. The Court's ruling continues the emerging line of Delaware cases utilizing deal-price-minus-synergies as the best measure of fair value for public company mergers subjected to open, arm's length negotiations.

The Court of Chancery (in an opinion we summarized here) had ruled that the fair value of Aruba Networks was approximately 30% less than the deal price Hewlett-Packard Company agreed to pay for it, reasoning that Aruba's 30-day average unaffected stock price was the most reliable indicator of fair value and that the Delaware Supreme Court's then-recent rulings in *Dell, Inc.* v. *Magnetar Global Event Driven Master Fund Ltd.* and *DFC Global Corp.* v. *Muirfield Value Partners, L.P.* endorsed reliance on efficient market prices. In doing so, the Court of Chancery gave no weight to the deal-price-minus-synergies methodology, finding the parties' estimates of the deal's significant synergies unreliable due to a failure to deduct other elements of value resulting from the merger required to be excluded from appraisal awards.

On appeal, the Delaware Supreme Court ruled that the evidence should not have given the trial court any reason to doubt that the parties' own synergy estimates took into account all merger-related value or, in turn, any reason not to rely on a deal-price-minus-synergy formula to determine fair value. Further, as the Court wrote, "the Court of Chancery also seemed to suggest that rote reliance on market prices was compelled based on its reading of *DFC* and *Dell*. . . . However, *Dell* and *DFC* did not imply that the market price of a stock was necessarily the best estimate of the stock's so-called fundamental value at any particular time."

The import of the Delaware Supreme Court's *Aruba* decision is twofold. First, it answers open questions raised by the Court of Chancery about the intended scope of *Dell* and *DFC*. The Supreme Court's opinion makes clear that it did not intend in *Dell* or *DFC* to endorse rote reliance on trading prices as the only reliable measure of going-concern value in statutory appraisal cases. Second, the Supreme Court's decision continues the Court's prioritization of deal-price-minus-synergies as the most reliable indicator of fair value in appraisal proceedings where an efficient, public market existed for the target company's shares and the subject transaction was negotiated at arm's-length and left open to interested bidders.

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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