DFC GLOBAL CORP. v. MUIRFIELD VALUE PARTNERS, L.P.
C.A. No. 10107 (Del. Aug. 1, 2017) (excerpted by Roberta Romano)

Strine, C.J.

In this appraisal proceeding involving a publicly traded payday lending firm purchased by a private equity firm, the respondent argues that we 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 rights is the best estimate of fair value. We decline to engage in that act of creation, which in our view has no basis in the statutory text, which gives the Court of Chancery in the first instance the discretion to "determine the fair value of the shares" by taking into account "all relevant factors." As this Court previously held in *Golden Telecom, Inc. v. Global GT LP*, that language is broad, and until the General Assembly wishes to narrow the prism through which the Court of Chancery looks at appraisal value in specific classes of mergers, this Court must give deference to the Court of Chancery if its determination of fair value has a reasonable basis in the record and in accepted financial principles relevant to determining the value of corporations and their stock.

On the record before us, however, the respondent has made two convincing case-specific arguments why the Court of Chancery's determination of fair value cannot be sustained on appeal. For starters, the respondent notes that the Court of Chancery found that: i) the transaction resulted from a robust market search that lasted approximately two years in which financial and strategic buyers had an open opportunity to buy without inhibition of deal protections; ii) the company was purchased by a third party in an arm's length sale; and iii) there was no hint of self-interest that compromised the market check. Although 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. But, despite its own findings about the adequacy of the market check, the Court of Chancery determined it would not give more than one-third weight to the deal price for two reasons.

The first reason was that there were regulatory developments relevant to the company being appraised and, therefore, the market's assessment of the company's value was not as reliable as under ordinary conditions. The respondent argues that this finding was not rationally supported by the record. We agree. The record below shows that the company's stock price often moved over the years, and that those movements were affected by the potential that the company's industry—payday lending and other forms of alternative consumer financial services—would be subject to tighter regulation. The Court of Chancery did not cite, and we are unaware of, any academic or empirical basis to conclude that market players like the many who were focused on this company's value would not have examined the potential for regulatory action and factored it in their assessments of the company's value. Like any factor relevant to a company's future performance, the market's collective judgment of the effect of regulatory risk may turn out to be wrong, but established corporate finance theories suggest that the collective

judgment of the many is more likely to be accurate than any individual's guess. When the collective judgment involved, as it did here, not just the views of company stockholders, but also those of potential buyers of the entire company and those of the company's debtholders with a self-interest in evaluating the regulatory risks facing the company, there is more, not less, reason to give weight to the market's view of an important factor.

The Court of Chancery also found that it would not give dispositive weight to the deal price because the prevailing buyer was a financial buyer that "focused its attention on achieving a certain internal rate of return and on reaching a deal within its financing constraints, rather than on [the company's] fair value." To be candid, we do not understand the logic of this finding. Any rational purchaser of a business should have a targeted rate of return that justifies the substantial risks and costs of buying a business. That is true for both strategic and financial buyers. It is, of course, natural for all buyers to consider how likely a company's cash flows are to deliver sufficient value to pay back the company's creditors and provide a return on equity that justifies the high costs and risks of an acquisition. But, the fact that a financial buyer may demand a certain rate of return on its investment in exchange for undertaking the risk of an acquisition does not mean that the price it is willing to pay is not a meaningful indication of fair value. That is especially true here, where the financial buyer was subjected to a competitive process of bidding, the company tried but was unable to refinance its public debt in the period leading up to the transaction, and the company had its existing debt placed on negative credit watch within one week of the transaction being announced. The "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. For these reasons, we remand to the Court of Chancery to reconsider the weight it gave to the deal price in its valuation analysis.

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On cross-appeal, the petitioners argue that the Court of Chancery abused its discretion by giving weight to its comparable companies analysis, and that the only correct weighting of relevant factors would have given primary, if not sole, weight to the discounted cash flow model. We disagree. The comparable companies analysis used by the Chancellor was supported by the record; this was a rare instance where both experts agreed on the comparable companies the Court of Chancery used and so did several market analysts and others following the company. Thus, giving weight to a comparable companies analysis was within the Chancellor's discretion.

Finally, the Court of Chancery's decision to give one-third weight each to the deal price, the discounted cash flow valuation, and the comparable companies valuation was not explained. Given the Court of Chancery's findings about the robustness of the market check and the substantial public information available about the company, we cannot discern the basis for this allocation. On remand, if the Court of Chancery chooses to use a weighting of different valuation methodologies to reach its fair value determination, the court must explain its weighting in a manner supported by the record before it.

For these reasons, we reverse and remand the Court of Chancery's ruling. On remand, the Chancellor should reassess the weight he chooses to afford various factors potentially relevant to

fair value, and he may conclude that his findings regarding the competitive process leading to the transaction, when considered in light of other relevant factors, such as the views of the debt markets regarding the company's expected performance and the failure of the company to meet its revised projections, suggest that the deal price was the most reliable indication of fair value.

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II.

On appeal, the case has reflected an emphasis on one issue that was not presented fairly to the Court of Chancery. Before us, DFC's central argument is that a judicial presumption in favor of the deal price should be established in appraisal cases where the transaction was the product of certain market conditions. DFC argues that those conditions pertain to this case and the Court of Chancery erred by not giving presumptive and exclusive weight to the deal price.

DFC also raises more case-specific issues on appeal. The first is a more constrained take on its deal price presumption argument, which involves the idea that based on the fact findings the Court of Chancery made regarding the nature of the market search, lack of conflict of interest, and other relevant economic factors bearing on the deal price, the Court of Chancery abused its discretion by only giving one-third weight to the deal price. More particularly, DFC argues that the two reasons that the Court of Chancery gave for not giving full weight to the deal price— the fact that DFC faced increasing regulatory constraints that could not be priced by equity market participants and the fact that the prevailing buyer was a private equity rather than strategic buyer—were not rationally supported by the record. . . .

For their part, on cross-appeal, the petitioners argue that the Court of Chancery abused its discretion by according weight to a comparable companies analysis, which the petitioners contend is not a reliable indicator of fair value, and that the court should have given primary, if not exclusive, weight to its discounted cash flow model.

Finally, DFC's overall argument raises another implied argument, which is that the Court of Chancery's decision to afford equal weight to the deal price, its discounted cash flow model, and its comparable companies analysis was arbitrary and not based on any reasoned explanation of why that weighting was appropriate.

We deal with these issues in the order just outlined. When reviewing a decision in a statutory appraisal, we use an abuse of discretion standard and grant significant deference to the factual findings of the trial court. This Court "will accept [the Court of Chancery's] findings if supported by the record . . . .

A.

The first issue we confront is one that did not feature in the same way before the Chancellor. On appeal, but not below, DFC argued for the creation of a judicial presumption that the deal price is the best evidence of fair value when the transaction giving rise to appraisal results from an open market check and when certain other conditions pertain. This focus has

generated interest from distinguished law professors on both sides of the question, who have weighed in with dueling amicus briefs.

But, before the Court of Chancery, DFC merely argued that the "arms-length, competitive, and fair sales process" entitled the deal price to receive "significant weight." DFC made a similar argument in its post-trial brief for the Court of Chancery. So, it is difficult to see how the argument that the deal price under these circumstances is entitled to a presumption of fair value was properly presented to the Court of Chancery and therefore can be argued to us now. We place great value on the assessment of issues by our trial courts, and it is not only unwise, but unfair and inefficient, to litigants and the development of the law itself, to allow parties to pop up new arguments on appeal they did not fully present below. For that reason alone, we are reluctant to even consider this argument. Nonetheless, because of its relationship to more case-specific issues, we explain why, even if this were fairly presented, DFC has not persuaded us to adopt its position.

B.

i.

Another key problem for DFC in presenting this argument now is that a similar argument was presented and rejected recently by this Court in *Golden Telecom*. In *Golden Telecom*, the respondent company argued that this Court "should adopt a standard requiring conclusive or, in the alternative, presumptive deference to the merger price in an appraisal proceeding." In rejecting that argument, this Court focused on the key language in 8 *Del. C.* § 262, stating that dissenting shareholders "shall be entitled to an appraisal by the Court of Chancery of the fair value of the stockholder's shares of stock under the circumstances described" elsewhere in the section. . . .

In particular, this Court focused on § 262's requirement that the Court of Chancery consider "all relevant factors" and that "fair value" entails "the value to the stockholder of the firm as a going concern. Thus, this Court concluded:

> Section 262(h) unambiguously calls upon the Court of Chancery to perform an *independent* evaluation of "fair value" at the time of a transaction. . . .. Requiring the Court of Chancery to defer—conclusively or presumptively—to the merger price, *even in the face of a pristine, unchallenged transactional process*, would contravene the unambiguous language of the statute and the reasoned holdings of our precedent. It would inappropriately shift the responsibility to determine "fair value" from the court to the private parties. . .

DFC would have us depart from the reasoning of *Golden Telecom*. But, we are not convinced we should do so. As *Golden Telecom* found, § 262(h) gives broad discretion to the Court of Chancery to determine the fair value of the company's shares, considering "all relevant factors." That statutory language was a key feature in *Weinberger v. UOP, Inc.* [for why the Court eliminated] the Block Method as the exclusive valuation methodology for appraisal. *Weinberger* ascribed this result to two amendments to the appraisal statute: i) the 1976

amendment that added the concept of "fair value" to the statute for the first time;97 and ii) the 1981 amendment that mandated the Court of Chancery "take into account all relevant factors." . . . .

ii.

Since *Weinberger*, and *Golden Telecom* itself, the key language in § 262 that those cases focused upon has remained unaltered. But, DFC would have us put a judicial gloss on the broad "all relevant factors" language, by determining that a particular factor is more relevant than others when certain conditions pertain. We do not, however, view the statutory language as inviting us to do so. Nor are we persuaded it is advisable to do so.

As we shall discuss, we have little quibble with the economic argument that the price of a merger that results from a robust market check, against the back drop of a rich information base and a welcoming environment for potential buyers, is probative of the company's fair value. But, not only do we see no license in the statute for creating a presumption that the resulting price in such a situation is the"exclusive," "best," or "primary" evidence of fair value, we do not share DFC's confidence in our ability to craft, on a general basis, the precise pre-conditions that would be necessary to invoke a presumption of that kind. We also see little need to do so, given the proven record of our Court of Chancery in exercising its discretion to give the deal price predominant, and indeed exclusive weight, when it determines, based on the precise facts before it that led to the transaction, that the deal price is the most reliable evidence of fair value. For these reasons, we adhere to our prior ruling in *Golden Telecom*. If the General Assembly determines that a presumption of the kind sought is in order, it has proven its attentiveness to our appraisal statute and is free to create one itself.

As our preceding discussion presages, our refusal to craft a statutory presumption in favor of the deal price when certain conditions pertain does not in any way signal our ignorance to the economic reality that the sale value resulting from a robust market check will often be the most reliable evidence of fair value, and that second-guessing the value arrived upon by the collective views of many sophisticated parties with a real stake in the matter is hazardous. In fact, the Chancellor himself, and his colleagues on the Court of Chancery, understand this, as both the decision in this case and other decisions of the Court make clear.

C.

Having rejected DFC's argument that the Court of Chancery was required to give presumptive weight to the deal price, we thus now turn to the more recordspecific argument about the role of the deal price in this case. DFC argues that in any assessment of the economic value of something—be it a company, a product, or a service—economics teaches that the most reliable evidence of value is that produced by a competitive market, so long as interested buyers are given a fair opportunity to price and bid on the something in question. This argument is sensible and in accordance with economic literature. It also accords with the generally accepted view that it is unlikely that a particular party having the same information as other market participants will have a judgment about an asset's value that is likely to be more reliable than the collective judgment of value embodied in a market price. This, of course, is not to say that the

market price is always right, but that one should have little confidence she can be the special one able to outwit the larger universe of equally avid capitalists with an incentive to reap rewards by buying the asset if it is too cheaply priced.

i.

Of course, the definition of fair value used in appraisal cases is a jurisprudential concept that has certain nuances that neither an economist nor market participant would usually consider when either valuing a minority block of shares or a public company as a whole. But, those features do nothing to undermine the ability of the Court of Chancery to determine, in its discretion, that the deal price is the most reliable evidence of fair value in a certain case, and that's especially so in cases like this one where things like synergy gains or minority stockholder discounts are not contested. In fact, if one were to look at the face of our appraisal statute, a case like the one before us today might seem simple. Precisely because DFC's shares were widely traded on a public market based upon a rich information base, the "fair value of the stockholder's shares of stock" held by minority stockholders like the petitioners, would, to an economist, likely be best reflected by the prices at which their shares were trading as of the merger. But, in *Cavalier Oil Corporation v. Harnett*, and other cases, this Court eschewed that reading of the statute and adopted a definition of fair value that is a jurisprudential, rather than purely economic, construct. That definition requires according the petitioner in an appraisal her pro rata share of the appraised company's value as a "going concern.". . . .

Whatever the exact policy reason, the pro rata share of going concern value formula has been used in our state's appraisal jurisprudence for a good time now and no party to this appeal takes issue with it. But, when that formula is distilled down, the basic economic concept of fair market value remains central to our statutory concept of fair value. . . . [I]n sum, our case law has been read to value the company on its stand-alone value.

ii.

In economics, the value of something is what it will fetch in the market.115 That is true of corporations, just as it is true of gold. Thus, an economist would find that the fair market value of a company is what it would sell for when there is a willing buyer and willing seller without any compulsion to buy. And, outside of the appraisal context, this Court has often embraced these concepts of value: "[I]n many circumstances a property interest is best valued by the amount a buyer will pay for it. . . . a well-informed, liquid trading market will provide a measure of fair value superior to any estimate the court could impose." . . .

Market prices are typically viewed superior to other valuation techniques because, unlike, e.g., a single person's discounted cash flow model, the market price should distill the collective judgment of the many based on all the publicly available information about a given company and the value of its shares. Indeed, the relationship between market valuation and fundamental valuation has been strong historically. . . .

For these reasons, corporate finance theory reflects a belief that if an asset— such as the value of a company as reflected in the trading value of its stock—can be subject to close

examination and bidding by many humans with an incentive to estimate its future cash flows value, the resulting collective judgment as to value is likely to be highly informative and that, all estimators having equal access to information, the likelihood of outguessing the market over time and building a portfolio of stocks beating it is slight.

Other realities emphasize why real world transaction prices can be the most probative evidence of fair value even through appraisal's particular lens. As the preceding discussion emphasizes, fair value is just that, "fair." It does not mean the highest possible price that a company might have sold for had Warren Buffett negotiated for it on his best day and the Lenape who sold Manhattan on their worst. . . .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.

The real world evidence regarding public company M&A transactions underscores this. Various factors prevalent in our economy, which include Delaware's own legal doctrines such as sell-side voting rights, *Revlon*, *Unocal*, the entire fairness doctrine, and the pro rata rule in appraisals, have caused the sellside gains for American public stockholders in M&A transactions to be robust. . . .[I]t is widely assumed that the sales price in many M&A deals includes a portion of the buyer's expected synergy gains, which is part of the premium the winning buyer must pay to prevail and obtain control.. For that reason, there is a rich literature noting that the buyers in public company acquisitions are more likely to come out a loser than the sellers, as competitive pressures often have resulted in buyers paying prices that are not justified by their ability to generate a positive return on the high costs of acquisition and of integration. . .

iii.

DFC argues that, with a company like itself, it was particularly unlikely that the market would somehow miss out if it had great growth prospects. After all, DFC's stock was listed on a major U.S. exchange, traded actively, and had moved sharply over the years when the company was poised for growth or facing dimming prospects. And, DFC was also actively examined by the debt markets, which rated and analyzed its creditworthiness. And of course, here, these market participants' judgments were supplemented by those of the numerous strategic and financial buyers who were contacted by Houlihan during the sales process and given a chance to buy DFC and to receive non-public information about it.

Because the Court of Chancery found that the sales process was robust and conflict-free, DFC argues that the Court of Chancery erroneously relied on two factors to diminish the role of the deal price in its fair value determination. To wit, that: i) DFC "appeared to be in a trough, with future performance depending on the outcome of regulatory decision-making that was largely out of the company's control"; and ii) Lone Star's status as a financial sponsor "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." Although the Court of Chancery has broad discretion to make findings of fact, those findings of fact have to be grounded in the record and reliable principles of corporate finance and economics. Despite the vigorous efforts of the

petitioners to justify the Court of Chancery's fact findings for according the deal price one-third weight, we fail to discern an adequate record to support them.

a.

First, the Chancellor found that the deal price was unreliable because DFC was in a trough with future performance dependent upon the outcome of regulatory actions, but he cited no economic literature to suggest that markets themselves cannot price this sort of regulatory risk. The payday lending industry is hardly unusual in being subject to regulatory risks. Publicly traded companies in industries like tobacco, energy, pharmaceuticals, and certain commercial products are subject to close regulation, the development of which can affect their future cash flows. Precisely because of that reality, the market's assessment of the future cash flows necessarily takes regulatory risk into account as it does with all the other reasonable uncertain factors that affect a company's future.[137] In this case, the payday lending industry was long subject to regulatory risk, albeit of a changing character.. . .

Beyond the reality that prevailing economic theories assume that markets take information about all sorts of risk, including regulatory risk, into account and price that information into the things traded on those markets, the record reveals that equity analysts, equity buyers, debt analysts, debt providers and others were in fact attuned to the regulatory risks facing DFC. For one thing, in the years leading up to the merger, DFC's stock price fluctuated, but it had an overall downward trend. Although the Canadian regulatory reform did not appear to negatively affect DFC's stock price, the extensive U.K. regulatory overhaul did seem to contribute to the decline in stock price.142 This highlights an important point.

That *Weinberger* got rid of the Delaware Block Method does not mean that the pre-transaction trading price of a public company's shares is not relevant to its fair value in appraisal, particularly given the focus on going concern value. Historically, appraisal actions have had the most utility when private companies are being acquired or for public companies subject to a conflicted buyout, situations where market prices are either unavailable altogether or

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[137] Since the 1980s, a robust economics literature has developed around the premise that "unanticipated changes in regulation result in a current change in security prices, and the price change is an unbiased estimate of the value of the change in future cash flows to the firm." G. William Schwert, *Using Financial Data to Measure Effects of Regulation*, 24 J.L. & ECON. 121, 121–22 (1981); *see also* John J. Binder, *Measuring the Effects of Regulation with Stock Price Data*, 16 RAND J. ECON. 167, 181 (1985) (conducting event studies around regulatory changes in regulated industries and finding "it is extremely difficult to find announcements in the regulatory process that are unanticipated by the market, even when the announcements are carefully studied to eliminate those that do not appear to have a major effect on expectations"). And, the corollary of that is "[i]f regulation has implications for the value of securities, the effects of regulation are impounded into prices at the time when they are first anticipated. Subsequent security returns only reflect the equilibrium expected returns to assets of comparable risk, unless the actual effects of regulation deviate from the originally anticipated effects." Schwert, *supra*, at 122.

far less useful. When, as here, the company had no conflicts related to the transaction, a deep base of public shareholders, and highly active trading, the price at which its shares trade is informative of fair value, as that value reflects the judgments of many stockholders about the company's future prospects, based on public filings, industry information, and research conducted by equity analysts.

And, during the relevant period, DFC's regulatory risk was being watched by two other key sets of folks who had money at stake: potential buyers in the sale process and participants in the debt markets.

The buyers who were part of the sales process—and who ultimately decided not to pursue a transaction with DFC—considered regulatory risk. In the spring of 2012, Houlihan contacted six financial sponsors about a possible transaction. Three parties were interested and conducted due diligence. But, by October of that year, all three lost interest. Over the next year, Houlihan contacted an additional thirty-five financial sponsors and three strategic buyers. Three interested parties emerged and were given access to management's projections. Lone Star and J.C. Flowers submitted non-binding indications of interest in late 2013, and only one party, Lone Star, continued to express interest after receiving additional projections from management in early 2014.[145] That these other potential buyers dropped out of the sales process after receiving confidential information about DFC suggests that these parties were aware of the "trough" DFC was in at the time and the uncertain future regulatory risk it faced, and ultimately did not think a transaction with DFC was worth pursuing. Indeed, J.C. Flowers cited the regulatory risk facing the company as its reason for not wanting to pursue a transaction with DFC.

Finally, the debt markets for DFC took into consideration the regulatory risk DFC was facing. In the fall of 2013, the same time that Houlihan was actively seeking buyers for DFC, DFC attempted to refinance around $600 million in Senior Notes. But, there was not enough investor interest and the offer was terminated. In other words, participants in the public bond markets weren't convinced they would get their money back if they gave it to DFC, and DFC was not offering enough interest to compensate investors for the risk they saw in the company. Furthermore, in a May 2014 presentation to certain rating agencies, DFC discussed the recent U.K. regulatory changes and the challenges it was causing DFC, including its negative effect on DFC's revenue. DFC also discussed the U.S. regulatory environment and mentioned that the

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[145] Admittedly, the petitioners point to evidence from Lone Star's files indicating that it thought it was taking an opportunity to buy DFC at trough pricing and that it could reap the upside of this risk. One would expect a buyer to think it made a wise decision with an upside. . . .That a buyer views itself as having struck a good deal is far from reliable evidence that the resulting price from a competitive bidding process is an unreliable indicator of fair value. . . .And, one would think that the buyer who paid the highest price in a competitive process had the most confidence there was an upside and must think that post-purchase gains would justify its purchase; otherwise, no sale would ever occur in the world. That Lone Star expected to profit does not mean that the collective view of value that results from the deal price is not a reliable indicator of fair value; to hold otherwise, is to adopt a non-binary view of fair value in which only the upside view of what could happen in the future is taken into account.. . .

Consumer Financial Protection Bureau had conducted an onsite review of DFC in 2013, and since then the company undertook certain corrective actions to enhance compliance. At the same time, DFC claimed that there was long-term opportunity to grow and expand as competitors struggled under the stricter regulatory framework. But, the Chancellor found that one of the reasons Lone Star lowered its offer to $9.50 was because its financing available for the transaction had fallen by $100 million due to DFC's reductions in projected EBITDA, which were of course related to the stricter regulations in the U.K. This confirms that debt investors also cared about and tracked DFC's regulatory challenges and took them into account when deciding if and at what yield it would invest in DFC's debt. As is the case with refinancings, so too do banks like to lend and syndicate the acquisition debt for an M&A transaction if they can get it done. That is how they make big profits. That lenders would not finance a buyout of DFC at a higher valuation logically signals weakness in its future prospects, not that debt providers and equity buyers were all mistaken. So did the fact that DFC's already noninvestment grade debt suffered a downgrade in 2013 and then was put on a negative credit watch in 2014.

Thus, the record demonstrates that the markets factored regulatory risk into DFC's pricing. Although the Court of Chancery gave DFC credit for being in a "unique position," that story was the same one that DFC told to sell itself to numerous buyers, the debt markets, and its existing stockholders. That this growth story was not accepted by the markets does not mean that the markets ignored it. Rather, the equity and credit markets were intensely focused on the extent to which DFC could address the new regulatory burdens and how they affected its potential for future growth.

b.

The second reason the Chancellor gave for finding the deal price unreliable was that Lone Star, a private equity firm, required a specific rate of return on its transaction with DFC. But, 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, or for that matter, any sizeable investment of its capital. That a buyer focuses on hitting its internal rate of return has no rational connection to whether the price it pays as a result of a competitive process is a fair one.[154] That is especially so when there are objective factors that support the fairness of the price paid, including: 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

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[154] Indeed, were it true that hitting an internal rate of return was somehow incompatible with achieving fair value, it would be hard to explain the results of studies that have shown that for specific sets of targets in auction-type situations, financial sponsor buyers, who ostensibly are the most disciplined users of internal rates of return to make investment decisions, place a higher value on them than strategic buyers, despite the conventional wisdom that strategic buyers can count on greater value from mergers through synergies.. And, of course, private equity buyers have to compete with strategic buyers and thus the potential synergy gains of other buyers and its effect on the bids they can make will influence the price any buyer of any type has to pay to prevail. Relatedly, the absence of synergistic buyers for a company is itself relevant to its value.

company's failure to meet its own projections. Importantly, the Court of Chancery determined that there was no conflict of interest. Indeed, the court observed that "[t]he deal did not involve the potential conflicts of interest inherent in a management buyout or negotiations to retain existing management—indeed, Lone Star took the opposite approach, replacing most key executives."

Especially untenable is the idea that the deal price cannot be relied upon as a reliable indicia of fair value because lenders would not finance the acquisition by Lone Star at a higher price. Lenders get paid before equity. They make profits by lending. If lenders fear getting paid back, then that is not a reason to think that the equity is being undervalued. Furthermore, the fact that the ultimate buyer was alone at the end provides no basis for suspicion given the Chancellor's own view of the process and the uncontradicted evidence of record finding that: i) there was no conflict of interest; ii) Houlihan had approached every logical buyer; iii) no one was willing to bid more in the months leading up to the transaction before management significantly adjusted downward its projections; and iv) management continued to miss its targets after Lone Star was the only buyer remaining. Thus, the record does not include 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. For these reasons, we cannot sustain the Chancellor's decision to give only one-third weight to the deal price because the factors he cited in giving it only that weight were not supported by the record.

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E.

We now reach the petitioners' cross-appeal. On cross-appeal, the petitioners argue that the Court of Chancery abused its discretion by giving weight to its comparable companies analysis. Indeed, they argue that the result of the discounted cash flow model should have been given predominant weight, and the deal price little, if any, weight.

As to the Chancellor's comparable companies analysis, the petitioners object for three reasons: i) the Chancellor, using EBITDA metrics from fiscal years 2014 and 2015 for the three calculations, relied on "trough years" for DFC's performance; ii) the comparable companies analysis would have yielded wildly different results if single years had been used and that draws into question its accuracy; and iii) none of the six companies selected as peers were, in fact, comparable to DFC. None of these arguments persuade this Court that the Chancellor abused his discretion.

The petitioners' first contention about the comparable companies analysis amounts to a recitation of its general, unsupported contention that DFC was primed for a surge in growth that was missed by the markets because of regulatory uncertainty and that market-based methods of valuation are inherently unreliable except when things are going really well. But, we are unaware of an accepted corporate finance or economic theory that suggests that market-based insights into value become inherently unusable in downturns or because of regulatory change. It was well within the Chancellor's discretion to view the comparable companies analysis as providing relevant insights into DFC's value based on inferences from how the market valued companies

in the same industry, facing most of the same risks.

The petitioners' second contention about the comparable companies analysis in some ways contradicts the first. The fair value figure DFC's expert and the Chancellor used was derived from the median of full year 2013 and 2014 and partyear 2014 financials. If DFC, and the industry as a whole, were truly in a period of volatile financial performance due to regulatory uncertainty, priming them for future growth, a blend of three of the most relevant years of financial results was a reasonable way to be more accurate as to DFC's future performance than attempting to guess the single year that is most representative. When the petitioners' expert conducted his comparable companies analysis, which admittedly he did not use as part of his fair value calculation, he did essentially the same thing, but used the 75th percentile figures rather than median. But, as the Chancellor noted, the petitioners' expert admitted "that using the median or 50th percentile is a more common benchmark, and that this was the only valuation he could recall in which he used the 75th percentile." Indeed, in some ways using the median figures was giving DFC the benefit of the doubt because most of its operating metrics, including revenue, gross profit, EBITDA, and EBIT, were below the median. . . .

The petitioners' third argument for the unreliability of the Court of Chancery analysis of the respondent's comparable companies estimate of fair value was that the peer group companies were not comparable to DFC. But, the six companies comprising the peer group used by the Chancellor and DFC's expert were in fact a subset of the seven companies the petitioners' expert used in his comparable companies analysis. Although the petitioners' expert argued that "none of the comparable companies had a mix of businesses and geographic locations that were sufficiently similar" to DFC, there was ample evidence in the record214 to support the Chancellor's decision that the six comparable companies both experts used were, in fact, sufficiently comparable for this analysis. As the Chancellor observed:

> Each of the six companies both experts used was comparable to DFC, as evidenced by the experts' agreement on them and by their use in peer group analyses that six different firms (including DFC itself, Lone Star, and Houlihan) used to evaluate DFC for various reasons from April 2013 to June 2014. Four of these peer companies were used by all six firms in their analyses. . . .

F.

Finally, we will address an issue implied in DFC's argument, that the Court of Chancery's decision to give equal weight to the deal price, its comparable companies valuation, and its discounted cash flow valuation cannot be justified by reference to the record. Because we have determined that the Court of Chancery's reasons for giving the weight it did to the deal price were not supported by the record, we arguably do not need to reach this larger issue. But, because this issue is present in many appraisal cases, we will address it. When faced with briefs and expert reports written by highly-skilled litigators in concert with men and women of valuation science that often come to ridiculously varying positions, the Court of Chancery may well feel tempted to turn its valuation decisions into a more improvisational variation of the old Delaware Block Method, but one in which the court takes every valuation method put in the record, gives each equal weight, and then divides by the number of them. When life is sloppy

and unpredictable, the visual appeal of a mathematical formula to create an impression of precision is understandable.

But, in 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 facts before it and corporate finance principles, why it is according a certain weight to a certain indicator of value. In 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. As one appraisal treatise points out, "laying down in advance fixed rules that state how competing approaches are to be weighted is impossible."[216] What is necessary in any particular case though is for the Court of Chancery to explain its weighting in a manner that is grounded in the record before it. That did not happen here. In this case, the decision to give one-third weight to each metric was unexplained and in tension with the Court of Chancery's own findings about the robustness of the market check.

III.

Taken together, our findings require us to reverse and remand this case to the Chancellor to reassess his conclusion as to fair value in light of our decision. We do not retain jurisdiction, and leave the Chancellor with the discretion to address the open issues using procedures he finds the most helpful. The Chancellor need not reopen the evidentiary record, and the extent of further submissions of the parties, *if any*, is entirely within his discretion, based on his determination as to what is most helpful to him.

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[216] Bradford Cornell, Corporate Valuation 263 (1993). That treatise recommends great weight to market-based approaches and caution with discounted cash flow models because those models are "easily abused" such that "value can be created out of thin air by optimistic forecasting. Therefore, the weight applied to a [discounted cash flow model] forecast should be directly proportional to the confidence that can be placed in the cash flow forecasts."