

[Securities Regulation Daily Wrap Up, MERGERS AND ACQUISITIONS—Del. Ch.: Appraisal value found lower than deal price, \(Jul. 22, 2019\)](#)

Securities Regulation Daily Wrap Up

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Upon analysis of unaffected market price, discounted cash flow, and other market evidence, the court concluded that the fair value of an acquired company's shares was approximately 81 percent of the merger price.

In a statutory appraisal action, the Delaware Court of Chancery found that the deal price of shares in a merger was in excess of the shares' fair value. The court noted that "very-well credentialed experts are miles apart" and that an extensive analysis was required to address the parties' numerous disputes regarding market indicators and traditional valuation methodologies. According to the court, the acquired company's unaffected market price of \$48.31 per share was a reliable indicator of its fair value, and an evaluation of various aspects of both parties' calculations supported this result. The court also found that the "comparable companies" analysis was not credible because the acquired company had no reliable comparables and that little weight should be afforded to the deal price less synergies (*In re Appraisal of Jarden Corporation*, July 19, 2019, Slight, J.).

Merger. Jarden Corporation was a consumer products company that held a diversified portfolio of over 120 well-known brands. The company experienced strong growth from 2001 through 2015, primarily through M&A activity. Over time, the Jarden chairman determined that he was interested in selling the company to devote more time to other endeavors. At the time, he was not authorized by the board to entertain sale discussions. The chairman met with the CEO of Newell Rubbermaid, Inc. and began discussing a merger and the potential deal price. Eventually, the chairman informed the Jarden board about the discussions, and the board encouraged him to continue.

At the time of the Jarden/Newell negotiation combination, Jarden was closing an acquisition of another company to which the market reacted negatively. The Jarden board determined that the company needed to project confidence and approved a stock buy-back. The Newell board authorized management to negotiate an acquisition of Jarden at a price between \$57.00 and \$60.00 per share, and the *Wall Street Journal* reported on the potential business combination, causing both Jarden's and Newell's stock price to rise. Jarden and Newell stockholders ultimately voted to approve the merger in April 2016; the mix of cash and Newell shares valued Jarden at \$59.21 per share.

Jarden stockholders thereafter filed for a judicial appraisal of the fair value of their shares as of the merger date.

Appraisal value. Jarden's expert applied a discounted cash flow (DCF) analysis and concluded that Jarden's fair value as of the merger was \$48.01 per share, and the shareholders' expert applied a "comparable companies" analysis and found that Jarden's fair value at the time was \$71.35 per share. The court noted that, in a statutory appraisal action, the "fair value" of shares must take into account "all relevant factors," which necessitates a deep dive into market indicators including unaffected market price, deal price less synergies, and traditional valuation methodologies such as comparable companies and DCF analyses. The respondents contended that the deal price was a reliable indicator of fair value, the court stated, but the Jarden board failed to test the market before agreeing to sell and "the sale process left much to be desired." Further, the court noted that evidence regarding deal synergies was conflicting and that little deference should be afforded to the deal price less synergies. Moreover, the petitioners' "comparable companies" analysis is not credible because Jarden had no reliable comparables, the court explained.

However, evidence of Jarden management's internal valuation of the company in connection with its own contemporaneous acquisition provides useful input, the court stated. In addition, Jarden's unaffected market

price of \$48.31 per share is a reliable indicator of its fair value at the time of the merger and supported by the respondents' expert and an event study that analyzed the market response to earnings and other announcements, according to the court. Using "the most credible components" of both parties' expert analyses to conduct an independent DCF valuation, the court found a valuation of \$48.13 per share.

"The DCF valuation corroborates the most persuasive market evidence," the court concluded.

The case is [No. 12456-VCS](#).

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Companies: Verition Partners Master Fund Ltd.; Verition Multi-Strategy Master Fund Ltd.; Fir Tree Value Master Fund, LP; Fir Tree Capital Opportunity Master Fund, LP; Jarden Corp.

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