



Ensuring All's Fair in Mergers and Acquisitions

When negotiating a merger or acquisition for your company, convincing others that a deal is fair can be challenging — especially when multiple stakeholders are involved. One way to help smooth acceptance of a proposal is to ask an independent financial advisor to issue a fairness opinion.

With a fairness opinion, a financial advisor reviews a proposed transaction from top to bottom and evaluates the deal's pricing and terms in the context of other similar deals. The advisor then provides a formal opinion about whether the transaction is fair from a financial point of view.

Consensus Builder

The most important reason to obtain a fairness opinion is to minimize the potential for shareholder disagreement and misunderstanding. Unhappy shareholders who think a deal treats them unfairly might hold up the transaction or even resort to litigation. At best, such concerns might result in costly delays. At worst, they could derail the entire deal. A solid fairness opinion can help keep a deal on track by providing objective, outside assurance that stakeholders are being treated fairly.

Large public companies have long used fairness opinions in merger and acquisition situations, but they have also been embraced by many smaller private companies. There are good reasons for this popularity. First, private companies frequently involve different classes of ownership — meaning that an acquisition bid could appeal to one group of shareholders but be resented by another. If the concern is significant enough, some shareholders may challenge the deal. Third-party validation that the transaction is financially fair can help avoid such a situation.

Second, many privately owned companies — such as family-owned businesses — are run according to a series of complex relationships. These relationships can generate disputes about how much to accept for a business sale. The disputes may become especially heated if certain shareholders feel they are receiving the short end of the stick.

Finally, private companies — especially smaller ones — often lack outside board members and the expertise or independence to fairly evaluate the financial merits of a transaction. Enlisting the help of an experienced advisor can provide needed financial skills and objectivity.

When to Obtain a Fairness Opinion

While it's never a bad idea to obtain an unbiased appraisal of a deal's fairness, there are certain situations in which you should consider a fairness opinion essential, including:

- When the selling company has received competing bids of differing prices and structures.
- When company insiders or affiliated parties are personally involved in the transaction.
- When the selling company's recent financial performance has been poor.
- When the offer is unsolicited.
- When significant stakeholders disagree about the adequacy of the offer.
- When only one bid has been solicited.

According to Stephen Glover and Doketra Vansimme, writing in the National Law Journal, selling companies should obtain at least one independent fairness opinion in "virtually every significant transaction." In fact, they recommend forgoing such an opinion only when a small amount of assets is being sold. Buying companies, meanwhile, should obtain a fairness opinion if the acquisition "requires shareholder approval, involves the purchase of a significant amount of assets outside the ordinary course of business, or will have a major impact on the way the acquiring company does business."

A fairness opinion can't guarantee that a pending merger or acquisition is a smart business move or will survive legal scrutiny. But it can help you and your business's other stakeholders feel more confident that everyone involved in the transaction is being treated openly and fairly.