



**FAIRNESS OPINION
MYTHS**

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Three Fairness Opinion Myths

By Greg Cook

A fairness opinion evaluates different types of transactions, including mergers, acquisitions, carve-outs, spin-offs, and buybacks, among others. This type of report provides an opinion about whether or not the proposed transaction is fair to the selling or target company. There are a few myths about fairness opinions that need to be addressed.

1. Fairness opinions are simply expensive valuations.

Fairness opinions, for purposes of satisfying the entire fairness standard, analyze and speak to the price but also the process of a transaction. While a valuation is a key component of the fairness opinion analysis, it is one of two key components: fair price and fair dealings. A fair price is similar to a standard valuation; however, it requires that directors commit to obtaining the highest price reasonably available to the company's stockholders under the circumstances. The courts have rules that a "fair price" does not overcome an "unfair dealing." Meanwhile, the concept of fair dealings focuses on process and "the actual conduct of

corporate fiduciaries in effecting a transaction, such as its initiation, structure and negotiation," according to Delaware law.

2. Fairness opinions correct deficient processes.

Boards may think a fairness opinion is a "get out of jail free card." This is simply untrue. A fairness opinion will not correct flawed processes; rather, it is meant to complement a good process. Additionally, a fairness opinion does not provide an opinion of the "best" price or "best possible" price, nor is it an independent appraisal of corporate stock or assets. A fairness opinion is not a clear indicator of a recommendation to move forward with a transaction or report on solvency or a company's capital structure. It is, however, a protection for the fiduciaries to highlight their Duty of Care and Loyalty. If there is a perceived conflict of interest, the opinion will bolster the case for the fiduciary with respect to fair price and fair dealings.

3. Only public companies need fairness opinions.

Public companies are not the only entities that need fairness opinions. Fairness opinions are utilized by boards of directors, special committees, trustees and other fiduciaries. Additionally, any group or individual who may be negatively impacted by a potential conflict of interest should request a fairness opinion. Any instance with multiple shareholders or conflicted parties should include a fairness opinion in their process.

Prairie has extensive experience providing fairness opinions for transactions of all sizes and levels of complexity, ranging from Employee Stock Ownership Plan (ESOP) transactions involving minority interests to complex multi-investor situations that present sophisticated securities design issues, equity incentive analysis and compensation structures. To ensure that the interests of sellers are being served, Prairie provides an independent financial opinion that considers all aspects of the potential transaction. Our professionals understand the importance of analyzing a transaction in its entirety and effectively communicating the results to the client. Prairie has rendered over 100 fairness opinions over the past 10 years, were named the 2020 U.S.A. Fairness Opinion Advisor of the Year by M&A Atlas and consistently rank as a Top 10 fairness opinion provider by Refinitiv (formerly Thomson Reuters).

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