



# CORPORATE TRANSACTION OPINIONS

## VALUATION RESEARCH CORPORATION

### **FAIRNESS OPINIONS**

A fairness opinion is a letter stating whether the consideration offered in a transaction, either by insiders or third parties, is fair to the nonaffiliated shareholders of the company from a financial perspective. Obtaining a fairness opinion helps boards of directors fulfill their fiduciary duties of loyalty and care by acting on an informed basis and also provides liability protection under the Business Judgment Rule.

Fairness opinions are typically prepared for independent directors and fiduciaries, buyers and sellers, limited partners, institutional investors, and trustees. Typical transactions triggering fairness opinions are tender offers (LBO, MBO, and going private), large block stock purchases, mergers, reorganizations, and hostile takeovers. Fairness opinions may also be required by related party transactions and bond indentures. When a transaction involves related parties, such as a director or company, a fairness opinion is needed to protect the director or company from being accused of unfair insider dealings. In the case of a bond indenture, a fairness opinion is required in order to protect the lenders from any fraudulent conveyance (an instance whereby a borrower transfers assets which may undermine the position of lenders).

With increased scrutiny from the NASD and the Delaware courts concerning fairness opinions, boards of directors would be well advised to consider all the qualifications of a fairness opinion provider, including fairness opinion expertise and the independence of the provider. A lesser course of due diligence leaves directors susceptible to lawsuits that question their business decisions because they relied on the opinions of advisors that were conflicted or poorly qualified.

### **SOLVENCY OPINIONS**

A solvency opinion is a document stating that a borrower is, and will remain, solvent under the burden of additional debt and is usually provided to protect the security position of the senior lenders and to protect selling shareholders, the board of directors and transaction advisors from having a transaction unravel in a future bankruptcy.

Transactions typically requiring solvency opinions are highly leveraged transactions, capital restructurings, and debt refinancings. Solvency opinions are generally prepared for lenders, boards of directors, buyers and sellers, and creditors.

### **CAPITAL ADEQUACY OPINIONS**

In many states, when a company contemplates a repurchase of stock or payment of a special dividend to shareholders, statutes require that the enterprise demonstrate that it would not be left with impaired capital. VRC determines and documents whether the fair value of a company's assets exceeds the company's liabilities by an amount in excess of a proposed repurchase or special dividend payment and the par value of the stock. We can provide a capital adequacy opinion either as a freestanding service or as an adjunct to a solvency opinion.