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VICE CHANCELLOR

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Date Submitted: May 8, 2014
Date Decided: May 19, 2014

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Re: *Huff Fund Investment Partnership v. CKx, Inc.*
Civil Action No. 6844-VCG

Dear Counsel,

On November 1, 2013, I issued my post-trial Memorandum Opinion in this appraisal action, finding the merger price generated from an arm's length sales process—$5.50 per share—to be the best available indicator of the fair value of the subject company, CKx.[1] Though I found, in the absence of reliable market- or income-based valuation analyses, that the merger price paid by the acquirer, Apollo, was the best available measure of CKx's fair value, I acknowledged that certain adjustments to the merger price might be necessary to reflect the value of

[1] For a detailed description of the sales process at issue in this litigation, I refer the reader to that Memorandum Opinion: *Huff Fund Inv. P'ship v. CKx, Inc.*, 2013 WL 5878807 (Del. Ch. Nov. 1, 2013).

the Company as a going concern. As a result, in my Memorandum Opinion, I indicated:

> As nearly every Delaware appraisal case makes clear, the objective of an appraisal is to determine the going-concern value of the target company's equity. The evidence that has been admitted so far suggests that there are few, if any, synergies for Apollo in this transaction. Because there is limited evidence in the record concerning the existence and amount of synergies that Apollo sought to realize in its acquisition of CKx, I will allow the parties, if they so desire, the opportunity to provide additional evidence on this limited issue.[2]

On November 8, 2013, the Petitioner filed a "Motion for Reargument of the November 1, 2013 Memorandum Opinion's Rulings Concerning Synergies and Other Assets Not Properly Accounted for in the Merger Price or, in the Alternative, for Certification of an Immediate Interlocutory Appeal from that Opinion." In support of that Motion, the Petitioner argued that (1) "the Court should modify the Memorandum Opinion by denying any further opportunity for Respondent to present evidence of synergies," and (2) "Petitioners should be given a commensurate opportunity to present further evidence on the existence of CKx assets 'not properly accounted for in the sale.'"[3] On January 13, 2014, I heard argument by telephone on that Motion. Despite the November 1 Memorandum Opinion's indication that I would allow the parties to supplement the record with additional evidence if they so desired, both the Petitioner and the Respondent

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[2] *Id.* at *15.
[3] Pet'r's Mot. for Reargument Op. Br. at 2.

represented at that teleconference that they wished to make argument based only on the existing record. Specifically, Petitioner's counsel stated at the teleconference that:

> To now allow, after the evidence has gone in and the record is closed, to allow the Respondent now an opportunity to be relieved of the consequences of a tactical choice that it made about what evidence to put on, from our perspective, doesn't seem to . . . accord with the interests of justice.[4]

Similarly, Respondent's counsel responded that:

> [W]e are not interested in imposing on the Court and coming back and having another trial. We are not interested in reopening all of the settled issues that we have gone through. We believe that the issue of synergies can be addressed on the papers. *We have no—we have no interest at this point in putting in additional witnesses or additional evidence.* We want to make a short and plain presentation on synergies.[5]

Accommodating the parties' preference, on May 8, 2014, I heard oral argument—without presentation of additional evidence—on the issues of (1) whether the merger price should be adjusted downward to exclude synergies Apollo sought to realize in the merger, and (2) whether the merger price should be adjusted upward to account for the value of certain assets not reflected in the merger price. For the reasons that follow, I decline to adjust the merger price in either direction.

[4] Jan. 13, 2014 Oral Arg. Tr. 9:6-11.
[5] *Id.* at 16:22-17:6 (emphasis added).

I. Analysis

Section 262(h) requires that, in conducting an appraisal, this Court "determine the fair value of the shares exclusive of any element of value arising from the accomplishment or expectation of the merger or consolidation,"[6] to arrive at a subject company's going-concern value, *i.e.*, its value as an operating entity.[7] Both the Petitioner and Respondent here agree that certain adjustments should be made to the merger price to appropriately reflect the going-concern value—as opposed to third-party sale value—of CKx.[8] However, while the Respondent argues that the merger price should be adjusted downward to exclude synergies derived by effectuation of the merger, the Petitioner contends that the merger price should be *upwardly* adjusted to include the value of certain business opportunities not priced in to the acquirer, Apollo's, bid. I understand that, as in other appraisal

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[6] 8 *Del. C.* § 262(h).

[7] *See Cede & Co. v. Technicolor, Inc.*, 684 A.2d 289, 298 (Del. 1996) ("Accordingly, the Court of Chancery's task in an appraisal proceeding is to value what has been taken from the shareholder, *i.e.*, the proportionate interest in the going concern. To that end, this Court has held that the corporation must be valued as an operating entity.") (citations omitted).

[8] *See generally* Pet'r's Supplemental Br. Concerning Assets and Opportunities; Resp't's Op. Br. on Merger-Related Synergies; *see also Union Illinois 1995 Inv. Ltd. P'ship v. Union Fin. Grp., Ltd.*, 847 A.2d 340, 356 (Del. Ch. 2004) ("The exclusion of synergy value . . . derives from the mandate that the subject company in an appraisal be valued as a going concern. Logically, if this mandate is to be faithfully followed, this court must endeavor to exclude from any appraisal award the amount of any value that the selling company's shareholders would receive because a buyer intends to operate the subject company, not as a stand-alone going concern, but as a part of a larger enterprise, from which synergistic gains can be extracted.").

proceedings, both parties here bear the burden to demonstrate fair value,[9] including whether adjustments to the merger price must be made to appropriately convert third-party sale value to going-concern value.

1. Merger-Related Synergies

As noted above, in assessing the fair value of a company in an appraisal proceeding, this Court must, pursuant to Section 262(h), "determine the fair value of the [subject company's] shares *exclusive of any element of value arising from the accomplishment or expectation of the merger* or consolidation . . . ."[10] Our Supreme Court has construed that requirement to prohibit an appraisal award that includes "the speculative elements of value that may arise from the 'accomplishment or expectation' of the merger."[11] In applying this section, I adopt common practice and refer to the exclusion of "synergies," which is a useful shorthand, if something of a misnomer; it tends to imply that only a strategic acquirer—unlike Apollo—could enter a transaction in which the twinning of the operations would result in a synergism: a value of the whole greater than the parts. Under the statute, however, in theory, if the acquisition of a company by a financial acquirer is at a market price that includes speculative elements of value

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[9] *See, e.g.*, *In re Appraisal of Metromedia Int'l Grp., Inc.*, 971 A.2d 893, 899 (Del. Ch. 2009) ("In an appraisal proceeding, both parties bear the burden of proving their valuation conclusions by a preponderance of the evidence.").
[10] 8 *Del. C.* § 262(h) (emphasis added).
[11] *Weinberger v. UOP, Inc.*, 457 A.2d 701, 713 (Del. 1983).

which arise only from the merger, that acquisition value may exceed the going-concern value.

The Respondent here contends that "the subtraction of synergistic elements of value from the merger price results in a going-concern value of CKx at the time of the merger of $5.21 per share," $0.29 per share less than the $5.50 per share Apollo paid in the merger.[12] To reach that conclusion, the Respondent relies on an April 30, 2011 Investment Memorandum created by Apollo based on diligence materials[13] provided by CKx management (the "Apollo Investment Memo"), which, according to the Respondent, "reflects the foundation underlying [Apollo's] $5.50 bid price, [and demonstrates that] Apollo identified and sought to realize $4.6 million in annual cost savings by converting CKx from a publicly held corporation to a privately held firm."[14]

The portion of the Apollo Investment Memo on which the Respondent relies is a 2011 budget identifying CKx's corporate overhead expenses. It contains figures for actual costs in 2007, 2008, 2009, and 2010, as well as columns labeled "[CKx] Management Identified Savings" and "Apollo Identified Savings."[15] Those costs and savings are then broken down into categories including "Salary &

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[12] Resp't's Op. Br. on Merger-Related Synergies at 1.
[13] *See* PX-104 at 4 ("We first conducted diligence on CKX in 2007 when Sillerman tried to take the Company private, and we have monitored the Company since that time. From August-December 2010, the Company granted us proprietary access to the Company, during which time we completed most of our diligence.").
[14] Resp't's Op. Br. on Merger-Related Synergies at 1.
[15] Pet'r's Responsive Br. Concerning Alleged Merger-Related Synergies Ex. A. at 3.

benefits," "Accounting & SOX," "Travel & entertainment," "Rent expense," "Legal fees," "Insurance," "Directors fees (cash portion only)," "Listing & franchise fees," "Consultants," "Utility expense," and "Other overhead."[16] The Respondent also points to certain other trial exhibits[17] that identify, without specifying the source of, "approximately $5 million in merger-related savings."[18]

While the Respondent assumes that "when a public company goes private, cost savings in some amount will be achieved,"[19] the Petitioner responds that the cost-savings identified in the Apollo Investment Memo are not synergies, as they do not represent value "uniquely available to the acquirer as a result of its ability to operate the acquired company as part of a larger corporate organization" that must be excluded "as a part of going concern value."[20] Further, the Petitioner asserts that a $2.5 million management fee Apollo is now charging CKx "swallows up all of the non-CKx management-identified cost savings claimed as 'synergies' by Respondent."[21]

Without reaching the theoretical question of under what circumstances cost-savings may constitute synergies excludable from going-concern value under Section 262(h), I conclude that the record here contains insufficient evidence to

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[16] *Id.*
[17] Those exhibits include PX-92, PX-97, PX-127, PX-135, PX-137, PX-138, PX-154, PX-159, and PX-161.
[18] Resp't's Reply Br. on Merger-Related Synergies at 8.
[19] *Id.* at 9 (citations omitted).
[20] Pet'r's Responsive Br. Concerning Alleged Merger-Related Synergies at 15.
[21] *Id.* at 25.

support a finding that Apollo formed its $5.50 bid based on cost-savings that, had the Company continued as a going concern, CKx management could not have itself realized. While the Respondent contends that "the Court need not look beyond the [Apollo Investment Memo] for convincing evidence identifying the $4.6 million as the amount Apollo believed it would save as a result of the merger,"[22] the cost-savings identified in that Memo do not speak for themselves. Rather, while the Apollo Investment Memo identifies cost-savings in certain categories, half from CKx management and half identified by Apollo itself, at oral argument, Respondent's counsel, with admirable candor, stated forthrightly that he could not state that the cost-savings identified by CKx management were savings that would have been unobtainable by CKx as a going concern.[23] Likewise, nothing in the Memo or otherwise in the record indicates that the cost-savings identified by Apollo were savings that could have been realized only by accomplishment of the merger. To the contrary, the Apollo Investment Memo does not on its face contain information sufficient to support a finding that Apollo believed *merger-specific* cost-savings would be realized. Further, while testimony from the Memo's authors

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[22] Resp't's Reply Br. on Merger-Related Synergies at 12.

[23] *See* Oral Arg. Tr. 41:17-42:3 ("So I cannot say that. I cannot. Because I want to be accurately clear with the Court. What I can say is that based on the investment committee memo and the other contemporaneous documents, and based on what they learned from management it was Apollo's conclusion that the public to private transformation would get them this 4.6 number. But I cannot say when we look at that one column, I cannot—I don't have evidence to say that management said 'this is something we can save if you buy us.' I don't know the answer to that question.").

might have clarified those ambiguities, the parties agreed not to reopen the record. Because I have no evidentiary basis to determine otherwise, I find that the merger price does not include any value derived from the accomplishment or expectation of the merger, and therefore decline to adjust the merger price downward.[24]

2. Assets not Properly Accounted for in the Merger Price

The parties also dispute whether the Court should upwardly adjust the merger price to reflect going-concern value by (1) adding value derived from CKx's post-merger acquisition of Sharp Entertainment ("Sharp"); (2) adding value to account for other "unexploited revenue opportunities" identified by Apollo based on diligence materials provided by CKx management; (3) adding value for support agreements Apollo entered into with large CKx stockholders; and (4) adding value to reflect that other buyers in the market were willing to pay more than the $5.50 merger price to acquire CKx. I initially indicated, in allowing the Petitioner to supplement its argument to address "missing" elements of value, that it struck me that such an argument seemed inconsistent, theoretically, with my finding in the Memorandum Opinion that an arm's length auction was the best evidence, on these facts, of the value of CKx. Upon reflection, it is clear that theoretical situations may exist where the market is unable to reflect the value of an asset, even if the sales price is the best evidence of fair value of the company,

[24] Because I do not rely on it, I need not address the Petitioner's Motion to Strike the Post-Trial Affidavit of Jefferey A. Cohen.

and thus where the value of the asset must be added to the sales price to equal fair value. The paradigm example would be the discovery, after price is set but before closing, of a treasure trove on company property, previously unknown to the seller or the market, of a value material to the transaction. Within that conceptual framework, I address the Petitioner's contentions in turn, below.

A. Sharp Acquisition and Unexploited Revenue Opportunities

The Petitioner contends that, in order to appropriately reflect going-concern value, the merger price should be upwardly adjusted to include value for certain future business opportunities—including CKx's post-merger acquisition of Sharp and certain other "unexploited revenue opportunities"—that were part of CKx's "operative reality" at the time of the merger. First, the Petitioner explains that after Apollo submitted its $5.50 bid for CKx, but prior to closing, in May 2011, CKx management entered into advanced discussions with Sharp about a potential acquisition.[25] The Petitioner accordingly argues that "the value of any corporate opportunities or assets that materialize between the ultimately accepted merger

[25] *See Huff Fund Inv. P'ship v. CKx, Inc*., 2013 WL 5878807, at *4 (Del. Ch. Nov. 1, 2013) ("In May of 2011, just one month before consummating the merger with Apollo, CKx began exploring a purchase of Sharp Entertainment, a television production company that focused on reality and event-based programming and was expected to generate about $11 million in operating income in 2011, roughly double its 2010 earnings. Sharp had produced several popular reality shows, including the Travel Channel's Man v. Food, the highest rated program in channel history. Sharp employed 160 people, most of whom were responsible for producing and editing the more than thirty television shows in the company's portfolio. Benson testified that CKx was involved in 'advanced discussions over price and terms' before the Apollo transaction closed.").

price offer and the effective date of the merger"—here, the Sharp acquisition—"are part of the company's going concern value and must be added to the price."[26] Second, the Petitioner contends that value should be added for "unexploited revenue opportunities" that Apollo identified in the Apollo Investment Memo based on diligence provided by CKx management, and which CKx management claimed to have also identified. Those opportunities included:

> (1) merchandise and music purchasing during *American Idol* voting over the phone ('Telephony'); (2) [*So You Think You Can Dance*] dance clinics, with contestants as instructors ('Dance Clinics'); (3) a permanent *American Idol* live event in Las Vegas ('Idol Vegas Live Event'); (4) international *Idol* competition with winners from each country, plus tour with top contestants ('International Format'); and (5) *American Idol* website managed or hosted by a third-party provider, such as Yahoo! Or AOL ('Internet (Idol)').[27]

The Petitioner explains that "[t]here are several reasons why an arms-length merger price might need to be adjusted to reflect the company's value as a going concern on the merger date. New assets may have been acquired, or new corporate opportunities may have arisen, between the negotiation of the merger price and the effective date of the merger, resulting in going concern value that exceeds the merger price."[28] The Petitioner misapplies that rationale in urging that I add the value of "unexploited revenue opportunities" to the sales price, however. The issue here is not whether, had CKx continued as a going concern, its future cash

[26] Pet'r's Supplemental Br. Concerning Assets and Opportunities at 6.
[27] *Id.* at 21.
[28] *Id.* at 1.

flows would have included revenue generated by projects the Company had in its pipeline. It is clear from our case law that, where a company begins to implement business plans, revenues from those plans must be accounted for in an income-based valuation method.[29] I understand the question presented here, however, where a market-derived sales price is used as the method of valuation, to be whether the record indicates that *market participants* were aware of the business opportunities identified by Apollo and CKx management such that the value of those opportunities was incorporated into the merger price.

Despite the Petitioner's suggestion that Sharp (and the other "unexploited revenue opportunities") are not reflected in the sales price, the record in this action indicates that prior to formulating its $5.50 bid, and based on diligence materials provided by CKx management, Apollo had identified several potential acquisition targets, including Sharp.[30] Further, there is no indication that other market

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[29] *See, e.g.*, *Delaware Open MRI Radiology Assoc., P.A. v. Kessler*, 898 A.2d 290, 314-15 (Del. Ch. 2006) ("Delaware law is clear that 'elements of future value, including the nature of the enterprise, which are known or susceptible of proof as of the date of the merger and not the product of speculation, may be considered.' Obviously, when a business has opened a couple of facilities and has plans to replicate those facilities as of the merger date, the value of its expansion plans must be considered in . . . determining fair value. To hold otherwise would be to subject our appraisal jurisprudence to just ridicule.") (citations omitted).

[30] *See* PX-134 at 38:17-20; PX-104 at 1 ("The context of our interest in CKX is our desire to create a broad content company (likely both through future acquisitions and joint venture partnerships) that would focus on content creation and distribution across multiple platforms . . . both in the U.S. and internationally."); *id.* at 14-16 (identifying unexploited revenue opportunities); *id.* at 58 (identifying Sharp as a potential target).

participants did not receive the same information in diligence.[31] In addition, with respect to the "unexploited revenue opportunities" (including Sharp), the Petitioner acknowledges that Apollo was aware of those opportunities before submitting its $5.50 bid (and in fact considered them "low-hanging fruit"),[32] and explains that "[d]uring due diligence prior to the merger, [CKx's financial advisor] Gleacher informed Apollo that CKx management had [also] identified [those] lucrative opportunities . . . ."[33] Again, there is no indication that the information upon which plans for the "unexploited revenue opportunities" were based was not provided to other bidders conducting diligence. Based on that evidence, I find that what was available to Apollo was available to the market at large—both the possibility of acquiring Sharp or a similar company, and of the Company's other "unexploited revenue opportunities"—such that the merger price reflected the value of those business opportunities.

The Petitioner disagrees with this analysis, contending that, because Apollo based its $5.50 bid on a "base case" that did not itemize value for the Sharp acquisition or "unexploited revenue opportunities," the CKx stockholders

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[31] *See id.* at 4 ("We believe that three other firms also approached the Company and that they have been invited inside as well.").

[32] *See id.* at 14 ("During the course of our diligence we were able to identify a number of 'low hanging fruit' initiatives . . . .").

[33] Pet'r's Supplemental Br. Concerning Assets and Opportunities at 21.

necessarily did not receive value for them.[34] In addition, the Petitioner argues that, because Apollo was unaware that Sharp—though identified as a possible acquisition target in the Apollo Investment Memo—was engaged in "advanced discussions" with CKx until *after* Apollo's $5.50 bid was submitted, that price could not have included value for the Sharp acquisition. I disagree with both contentions. As I explained in my November 1 Memorandum Opinion, the sales process that resulted in Apollo's $5.50 bid was an arm's length transaction—an auction—aimed at achieving the highest price for CKx stockholders. In an auction setting, it makes little sense to determine whether a bid incorporates information about the value of certain opportunities by considering only the idiosyncratic weight attached to that information by any particular bidder, even the winning bidder. Consider the famous, perhaps hackneyed, example of the auction of a cornfield in an urban setting, say downtown Wilmington.[35] The highest use, obviously, for the property is as office space, not for agriculture. The price generated at auction for the cornfield would necessarily reflect the value of the land for development. Now suppose the winning bidder at auction were not a developer, but an eccentric farmer, who intended to till his acres in the shadow of

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[34] *See id.* ("The evidence is crystal clear that Apollo never included the value of these opportunities in its $5.50 merger price.").

[35] *See ONTI, Inc. v. Integra Bank*, 751 A.2d 904, 910 (Del. Ch. 1999) (analyzing a hypothetical cornfield in the middle of Manhattan) (citing Symposium: *Delaware Appraisals after Cede & Co. v. Technicolor*, 17 Bank & Corp. Governance L. Rep. 631 (1996)); Lawrence A. Hamermesh & Michael L. Wachter, *The Fair Value of Cornfields in Delaware Appraisal Law*, 31 J. Corp. L. 119 (2005).

the New Castle County Courthouse. The eccentric farmer himself recognized no subjective value from the higher-revenue-generating use of the property operated as an office complex, and did not base his bid on such use. Nonetheless, the rest of the bidders—the market—recognized the value of development, and it informed their bids. The eccentric farmer, therefore, paid consideration for the opportunity he disdained, as he topped all offers submitted by bidders that did consider its value. In such a case, it would overstate the value of the land to add to the price paid the development value for which the auction price already accounted.[36]

The Petitioner's argument that Apollo's winning bid must be supplemented with the value of opportunities Apollo (theoretically) insufficiently valued in its "base case" is similar to the example above: Apollo was aware of a potential deal with Sharp and other similar companies;[37] Apollo had identified the "unexploited

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[36] By contrast, if the eccentric corn farmer were to discover, between the time he submitted his bid and the time the transaction closed, the proverbial secret treasure trove buried beneath the cornfield—unknown to other market participants during the auction process—his bid could not be said to include value for *that* asset. Compare the case of the compromised starlet. If an entity's sole asset was exclusive photographs of a movie star in a compromising situation, its value, presumably, would be the advertising and sales revenue to be generated from public interest in the photographs. In an auction of the company, suppose an agent of the movie star is the top bidder, outbidding all tabloid publications and websites, and that he receives and destroys the photographs. It would make little sense to argue that the value of the company is the winning bid *plus* the potential revenue stream from publication, on the ground that the agent never intended to monetize that revenue stream. The Petitioner's argument that Apollo's topping bid relied on its "base case" only, and must therefore be adjusted upward, is similar.

[37] The Petitioner concedes that when it formulated its bid, Apollo was aware of Sharp "as a potential future add-on acquisition," but emphasizes that at that time Apollo "had no idea CKx was on the cusp of acquiring Sharp itself." Pet'r's Supplemental Br. Concerning Assets and Opportunities at 16. Without considering whether the parties were in fact on the "cusp" of a deal, I note that the Petitioner has not attempted to quantify the difference between (1) how the

revenue opportunities;" that information was derived from diligence materials provided by CKx management; and there is no indication that other bidders were deprived of similar information. The subjective valuation placed by Apollo on these opportunities is not relevant. Because I find that the market had the opportunity to value these opportunities, and because Apollo topped the market, it would overstate the value of CKx were I to add to the market price the value of the unexploited opportunities. I therefore decline to adjust the merger price in this regard.

B. The Sillerman and Presley Support Agreements

The Petitioner also contends that "enhanced non-monetary benefits given by Apollo to Sillerman and the Presley interests to obtain control must be shared pro rata with the dissenting shareholders in an appraisal proceeding."[38] It explains:

> To ensure it would obtain the requisite majority [necessary to approve the merger], Apollo entered into a support agreement with [CKx stockholder] Sillerman and his affiliates, who owned approximately 20.7% of the outstanding common shares. . . . Specifically, Sillerman

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market would have valued the Sharp acquisition at the time Apollo submitted its $5.50 bid and the Sharp acquisition was merely one possibility on a list of "potential" acquisitions, and (2) how the market would have valued the Sharp acquisition after CKx revealed it was in "advanced discussions," but the transaction was still far from certain. Even as of May 4, 2011, CKx management indicated that "[d]iligence to date has been top level. At this point the Company has done no detailed financial or operational due diligence; therefore the preliminary information presented herein is subject to change." JX-123 at 1 (capitalization modified from original); *see also* Resp't's Br. in Opp'n to Pet'r's Mot. for Reargument at 8 ("CKx and Sharp had not agreed to a term sheet or contract structure for a Sharp acquisition (which would not close for another year), substantial due diligence remained to be undertaken by CKx, and Sharp still had to provide CKx with proper and GAAP-compliant financial statements.").

[38] Pet'r's Supplemental Br. Concerning Assets and Opportunities at 17 (capitalization modified from original).

> obtained the contractual right to exchange half of his CKx shares of the acquirer's parent company (an Apollo affiliate), thereby allowing him to rollover half of his equity into the new entity. But Sillerman also obtained the right (subject to certain restrictions) to put those shares back to the party (*i.e.*, to Apollo) for the Merger Consideration after the Merger. . . . For similar reasons, Apollo entered into a support agreement with the Promenade Trust, which is controlled by [CKx preferred stockholder] Priscilla Presley and which owned all of CKx's outstanding convertible preferred shares, to obtain the Presley interests' backing for the Merger.[39]

Put simply, the Petitioner argues that the total consideration Apollo paid for CKx is not limited to $5.50 per share, but includes the value of non-monetary side consideration flowing to Sillerman and Presley to ensure the merger would be approved, and that the Petitioner is entitled to its pro rata share in the value of that additional consideration. The Respondent contends, on the other hand, that the Petitioner in fact asks for its proportionate share in a control premium to which it is not entitled as an element of going-concern value.

Without deciding whether the Sillerman and Presley agreements may be appropriately considered a control premium, I find that, even if I were to accept its argument that value should be added to the merger price to account for the Sillerman and Presley support agreements, the Petitioner has presented no reasonable method by which the Court could value those transactions.[40] As the

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[39] *Id.* at 17-18.

[40] The Petitioner suggests that the support agreements constituted a control payment that could be valued at between $0.285 and $0.428 per share, because "[t]his Court typically has endorsed a 30 percent control premium in the analogous context of adjusting for the minority discount inherent in comparable companies analysis." *Id.* at 20. That statement provides no persuasive

Respondent rightly emphasizes, Sillerman never exercised his right under the support agreement to roll over equity in the new entity, suggesting that the value of the agreement, at least to him, was minimal.[41] Ultimately, I am aware of no non-speculative method to determine what value, if any, flowed to Sillerman and the Presley interests that was not shared by the common stockholders. I therefore decline to upwardly adjust the merger price to include value for the support agreements based on the record that the parties have placed before me.

C. The Possibility of a Higher Bid

Finally, the Petitioner contends that Apollo's $5.50 bid "is not the highest amount that active bidders were willing to pay for CKx in an arms-length transaction."[42] Specifically, the Petitioner points to the facts that (1) another interested bidder, Gores, indicated that it was willing to pay $5.60, but its bid was rejected because the board was "unconvinced that Gores had authority to fully fund the purchase of CKx," and (2) before CKx accepted Apollo's $5.50 bid, an Apollo employee inquired of its financial advisor, Goldman Sachs, whether it would be willing to finance a higher bid.[43]

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basis for determining the value, if any, that Apollo forfeited in exchange for entering into the support agreements, which value Apollo otherwise would have been willing to pay to CKx stockholders pro rata.

[41] Oral Arg. Tr. 69:2-3.

[42] Pet'r's Supplemental Br. Concerning Assets and Opportunities at 23.

[43] PX-112.

With respect to the first contention, I previously found in my November 1 Memorandum Opinion that the merger transaction at issue here was an arm's length negotiation, and rejected the Petitioner's argument that, in order to obtain a higher bid, the board should have provided Gores additional time to remedy the board's concerns about its ability to finance a transaction.[44] The record is devoid of compelling evidence demonstrating that Gores could have paid $5.60 had the board provided it additional time. With respect to the second contention, I find unpersuasive the suggestion that, by seeking more information from its financial advisor about its options in the event CKx rejected its $5.50 bid, Apollo demonstrated willingness to a pay a higher price—that simply does not follow. As I remain unconvinced, based on the evidence in the record, that the sales process here failed to achieve the full value available from the market, I decline to adjust the merger price on either basis.

II. Conclusion

For the reasons stated in my Memorandum Opinion of November 1, 2013, the sales price is the best indicator of fair value here. Neither party has

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[44] *See Huff Fund Inv. P'ship v. CKx, Inc.*, 2013 WL 5878807, at *13 (Del. Ch. Nov. 1, 2013) ("Of course, the issue in this case is fair value, not fiduciary duty. The relevant point is that market exposure comes with a downside, and there is no evidence to suggest that the timeline compromised the effectiveness of the process. None of the bidders contacted by Gleacher asked for more time, or otherwise indicated that they were deterred by the CKx Board's deadlines. Accordingly, I find that the process that generated the merger price supports a conclusion that the merger price is a relevant factor in determining CKx's fair value.").

demonstrated, based on the record before me, that that value should be adjusted consistent with Section 262(h). An appropriate Order accompanies this Letter Opinion.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

HUFF FUND INVESTMENT PARTNERSHIP d/b/a MUSASHI II LTD. and BRYAN E. BLOOM, Petitioner, v. CKx, INC., Respondent.	)))))))))))	C.A. No. 6844-VCG

ORDER

AND NOW, this nineteenth day of May, 2014,

For the reasons stated in my November 1, 2013 Memorandum Opinion and May 19, 2014 Letter Opinion, IT IS HEREBY ORDERED that the fair value of one share of CKx, Inc. is $5.50.

SO ORDERED:

/s/ Sam Glasscock III

Vice Chancellor