

Rosen Seymour Shapss Martin & Company LLP
 Certified Public Accountants & Profitability Consultants

The Watchful Eye

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 of Rosen Seymour Shapss Martin & Company LLP*

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Greetings!

Welcome to *The Watchful Eye* - a publication of the Business Investigative and Insolvency Services Group of Rosen Seymour Shapss Martin & Company.

We welcome your questions or comments about the topics discussed or related ones. Please feel free to contact me at 212-303-9027 or by e-mail at rmodansky@rsmcpa.com or my partner and co-chair, Martin Leventhal at 212-303-9030 or by e-mail at mleventhal@rsmcpa.com and let us know how we can be of assistance.

Sincerely,

Robert A. Modansky, CPA
 Martin Leventhal, CPA

Partners and Co-Champions of the Business Investigative and Insolvency Services Group

Fairness Opinion

What is a Fairness Opinion?

A fairness opinion is a letter prepared by a qualified financial professional that states whether or not a business transaction is fair from a financial perspective. A fairness opinion is not intended to assess the legal fairness or whether the transaction was a wise business decision. Fairness, from a financial perspective, is determined within the context of state law. A fairness opinion is prepared as of a specific date and may depend upon certain assumptions and limiting conditions.

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A fairness opinion letter is generally a summary of and a follow-up to an oral presentation to the decision maker before a particular transaction occurs. Thus, a fairness opinion is

generally much shorter in length than a valuation report. The fairness opinion letter should briefly summarize the transaction's details and the expert's fairness conclusion. In addition, the letter should disclose any relationship between the expert and the decision maker, as well as all assumptions and limiting conditions, such as limited access to information or reliance on management's representations. The letter should be dated as close to the transaction date as possible or the mailing date if a proxy is to be mailed to shareholders. The letter's addressee should be the decision maker, usually the board of directors or the general partner(s).

Uses of a Fairness Opinion

A fairness opinion is not required every time a business is bought or sold. However, wherever minority shareholders, limited partners, or related parties are involved, it may be prudent to obtain a fairness opinion as a "measure of prevention." At the very least, a fairness opinion can give the parties peace of mind. And, if the board of directors obtains a fairness opinion prior to a transaction, and litigation later ensues, the written opinion might help persuade a court that the board attempted to make an informed business decision.

Fairness Opinion vs. Valuation

Like a valuation, a fairness opinion is valid as of a specific date and may be subject to the assumptions and limitations disclosed in the report. In addition, many of the techniques used to evaluate a transaction's fairness are similar to the approaches used in valuing a business. However, where a valuation generally determines "fair market value," a fairness opinion determines "fair value." The expert preparing a fairness opinion should work closely with the attorney to determine the applicable definition of "fair value." In addition, a fairness opinion differs from a valuation because the former estimates a range of values - with the upper end being the highest price a reasonable buyer would pay and the lower end being the lowest price a willing seller would accept. If the consideration proposed for a given transaction falls within the expert's range of values, it is considered to be fair.

A fairness opinion is a technically complex document. Within RSSM's Business Investigative & Insolvency Services Group are professionals with the experience and expertise to prepare such a report. Please contact us to learn more about this type of opinion, and others that may be used when contemplating a merger or acquisition, as well as our experience in preparing them and advising you in their use.

Rosen Seymour Shapss Martin & Company LLP, through its Business Investigative & Insolvency Services Group, provides services to clients, attorneys and others in the interpretation and evaluation of complex accounting, tax and other financial and business issues. Areas in which we provide our expertise include:

Bankruptcy and Insolvency
Forensic Accounting
Litigation Services
Fraud Investigations
Business Valuation
Mergers and Acquisitions
Financial and Accounting Analyses
Damage Assessments
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