

Case Study

Fairness opinion helps board with fiduciary responsibilities*

After Systech Retail Systems, a retail technology developer and integrator, cemented a letter of intent with Torex Retail, Systech needed a fairness opinion — and fast.

The company learned two funds that sat on their board had significant interest in the Systech-Torex deal. To ensure a transparent deal, PwC stepped up to the challenge delivering a fairness opinion that met a tight deadline and assisted the board with their fiduciary responsibilities. The deal was recommended by the board and approved by a majority vote by Systech's shareholders.



Helen Mallovy Hicks, Partner,
Valuation & Strategy Advisory

Background

In August 2005, Torex Retail Plc, a U.K. company on the London Stock Exchange, and its Canadian subsidiary, initiated a business combination agreement with Systech. The main objective: acquire Systech.

During negotiations, Systech learned two equity funds who were company debt holders and sat on Systech's board of directors had significant interest in the Systech-Torex deal. This resulted in differing board interests. So Systech's legal counsel, Alfred Apps of Fasken Martineau, recommended it obtain a fairness opinion, to be used as one factor among others, to ensure a transparent transaction, fair to minority shareholders.

The challenge

One of Systech's biggest challenges was time. They needed an independent financial advisor to produce a fairness opinion before shareholders received their 'Notice of Meeting and Management Proxy Circular' (a financial document telling shareholders when they would vote on Torex's arrangement to acquire Systech).²

"We not only had to find someone who could do a fairness opinion – but someone who could do it fast," explains Richard Adair, Systech's former CFO.

After research and deliberation, Systech selected PwC's Helen Mallovy Hicks and her Valuation & Strategy Advisory team. Their experience with independent valuations and fairness opinions, impressive references and strong reputation for fast turnarounds helped cinch the assignment. "And, they also came highly recommended by our legal counsel," Adair adds.

PwC's approach

"We had to work in parallel with members of Systech's management team and their advisors while the Systech-Torex transaction was being finalized," explains Mallovy Hicks.

She had only 19 business days to present a fairness opinion to Systech's Independent Committee³. "We all had to step up to the challenge to meet this exceptionally tight timeline," she adds.

The team coordinated interviews and meetings with Systech management to learn about the business, its operations, financial position, forecast, relative risks, key assets, the state of the retail technology industry, their competitive market position, opportunities for growth and any other information possibly impacting the transaction.

The outcome

PwC met Systech's deadline. The team presented that the transaction was fair, from a financial point of view to the Independent Committee. The fairness opinion report was also added to Systech's shareholder information circular.

One month later, shareholders voted in favour of the transaction: "Having the report produced in such a short time frame helped the company meet its objective of taking the proposed transaction to the shareholders quickly and it assisted the board in carrying out its fiduciary responsibilities," says Mallovy Hicks.

"The risk of existing or former shareholders or creditors scrutinizing the transaction and taking legal action is much higher in this type of situation," explains Adair. "PwC's ability to meet a tight deadline and provide a thorough analysis of the transaction with a fair outcome prevented a chain reaction that could have potentially put shareholders at risk."

"We ended up with an outstanding circular, a very balanced fairness opinion and a near unanimous shareholder vote in favour of the transaction," adds Alfred Apps. "I give a lot of credit to that PwC report."

Helen M. Mallovy Hicks

416 814 5739

helen.m.mallovy.hicks@ca.pwc.com

www.pwc.com/ca

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1. A fairness opinion is a letter report from an independent financial advisor providing an opinion on the fairness of a proposed transaction from a financial point of view. They can be especially beneficial during situations where a conflict of interest arises.
 2. According to the Canadian Business Corporation Act, shareholders must receive a copy of financial statements respecting the financial position of the corporation 21 business days before the date of their annual or special meeting.
 3. The Independent Committee was a sub-section of Systech's board of directors, consisting of its independent members.