

M&A Nugget: Dissenters' Rights

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In Maryland, and other states, a stockholder who does not believe that the purchase price to be paid by an acquirer is fair value has the right to object to the sale and receive payment for the fair value of the stock. The basic procedure for a stockholder to invoke that right is to object to the proposed transaction in writing, not vote in favor of the transaction and make a demand for payment of the stock. The target may then notify the stockholder of the price the target is willing to pay for the stock. If that price is not satisfactory to the owner, or the target does not notify the owner, then the owner may ask a court to obtain an appraisal to determine the fair value of the stock. If the court accepts the appraisal or, not accepting the appraisal, determines the fair value of the stock itself, the amount determined shall be entered as a judgment against the target. Although the use of these dissent and appraisal rights is rare, both parties to a sale transaction need to be aware of them, especially if the acquirer intends to purchase 100% of the target's stock.