

PRACTICE STANDARD NO. 510

FAIRNESS OPINIONS

DISCLOSURE STANDARDS AND RECOMMENDATIONS

1. Chartered Business Valuators may be retained to provide a conclusion as to the fairness of a proposed transaction to security holders (or to a group of security holders), from a financial point of view. In these circumstances, written communications arising from such engagements are termed "Fairness Opinions".
2. A Fairness Opinion is defined as **"any written communication containing a conclusion as to the fairness of a proposed transaction to security holders (or a group of security holders), from a financial point of view."** A Fairness Opinion does not include work product that is in the process of being completed that is provided to a client or knowledgeable third party in circumstances where each of the following conditions are met: (i) the work product is clearly marked as being in draft form and subject to change; (ii) the work product is issued for the purpose of obtaining comment, instruction, confirmation or other information required to complete the Fairness Opinion; and (iii) the Fairness Opinion issuer knows, or reasonably ought to know, that the intended reader(s) does not intend to rely on the work product or distribute the work product to a third party who may in turn rely on such work product.
3. Fairness Opinions are routinely used by boards of directors to satisfy their fiduciary duties to act with due care and in an informed manner with respect to the fairness, from a financial point of view, of a proposed transaction. A Fairness Opinion, or information about it, is often provided to shareholders as a part of the proxy materials.
4. A Fairness Opinion outlines specifically the subject matter of the conclusion, how it relates to the proposed transaction and all material assumptions and limitations. The particular facts of a proposed transaction will affect the degree to which the Fairness Opinion issuer will consider the transaction to be fair, from a financial point of view. In conducting the fairness assessment, the Fairness Opinion issuer considers the factors and circumstances particular to the proposed transaction. The Fairness Opinion describes the various factors considered important by the Fairness Opinion issuer in performing its fairness analysis.
5. The disclosure requirements of this Standard should not be viewed as an all-inclusive list of required disclosure but rather as a guideline for the Fairness Opinion issuer in exercising professional judgment to determine acceptable disclosure. There will be situations where certain items listed are not applicable or where other items that are not listed should be disclosed. The Fairness Opinion issuer should consider the level of disclosure described herein when considering the appropriate level of disclosure in a Fairness Opinion concerning

matters or factors not specifically addressed herein but that are significant in reaching a fairness conclusion.

6. Reference to the Fairness Opinion issuer includes his/her firm, partnership or corporation.
7. At a minimum, a Fairness Opinion shall contain the following information, which is set out herein in bold characters. “Recommendations” are not mandatory, but encouraged. “Explanatory comments” provide additional guidance in applying the specific provisions of the Standard.

8. Fairness Opinion Disclosure

- 8.1 **The Fairness Opinion shall provide sufficient information to allow a reader to have a meaningful understanding as to the basis for the conclusion expressed by the Fairness Opinion issuer;** (*Explanatory comment:* the amount of information included and the manner of disclosure is a matter of professional judgment, based on the scope of review and the purpose for which the Fairness Opinion is intended).
- 8.2 **The Fairness Opinion shall contain the disclosures as noted below:**
 - A. **To whom the Fairness Opinion is being provided;** (*Explanatory comment:* if not readily apparent from the addressee, the name of the party who engaged the Fairness Opinion issuer should be disclosed);
 - B. **A description of the proposed transaction and the consideration being offered to the security holders (or to a group of security holders);**
 - C. **The purpose of the Fairness Opinion;**
 - D. **The effective date of the Fairness Opinion;**
 - E. **The identity and credentials of the Fairness Opinion issuer;**
 - F. **A description of the basis of the Fairness Opinion issuer’s compensation arrangements, including but not limited to, matters such as whether: i) it is a flat fee, ii) it includes compensation based on engagement milestones, iii) the compensation is contingent on acceptance of the fairness conclusion by the engaging party or iv) the compensation is contingent upon the successful completion of the transaction.** (*Explanatory comments:* the required disclosure does not necessarily include the quantum of the compensation. The nature of compensation arrangements may be relevant in the determination of the Fairness Opinion issuer’s actual or perceived independence. When the compensation is based on engagement milestones, these should be described, and the percentage of fees to be paid on each milestone should be disclosed);
 - G. **A description of any past, present or anticipated relationship or arrangement between the Fairness Opinion issuer and any interested party to the proposed transaction, that may be relevant to a perception of lack of independence of the Fairness Opinion issuer, such as also acting as a financial advisor to any party to the proposed transaction or any other matter in which compensation was received or is intended to be**

received as a result of the relationship between the Fairness Opinion issuer and any party to the proposed transaction;

- H. **A clear statement that either (i) the Fairness Opinion was prepared by the Fairness Opinion issuer acting independently and objectively or (ii) the Fairness Opinion was prepared by the Fairness Opinion issuer not acting independently and objectively.** (*Explanatory comments:* in making a determination as to whether or not the Fairness Opinion issuer was acting independently and objectively, the Fairness Opinion issuer should consider the basis of their compensation, any past, present or anticipated relationship or arrangement between the Fairness Opinion issuer and any interested party to the proposed transaction that may be relevant to a perception of the lack of independence of the Fairness Opinion issuer and any other matter that would reasonably create a perception of lack of independence. Reference should be made to the CICBV Code of Ethics for the principles and standards dealing with financial interests, contingent fees or fees based on the outcome of the matter with regard to which the Fairness Opinion issuer has been engaged, commission or referral fees, conflicts of interest and other matters that may affect the determination of independence.)
- I. **A description of the subject assets or securities (including non-cash consideration) to be exchanged and proposed transaction terms, sufficient to allow the Fairness Opinion reader to understand the key components of the financial fairness analysis;**
- J. **A statement that the Fairness Opinion has been prepared in conformity with the Practice Standards of The Canadian Institute of Chartered Business Valuators;** (*Recommendation:* a Fairness Opinion prepared in conformity with the requirements of relevant securities legislation, regulation or policies should also meet the disclosure requirements of such legislation, regulation or policies);
- K. **The Fairness Opinion shall contain a description of the scope of the review conducted, including a summary of the type of information reviewed and relied upon;**
- L. **A description of any valuation work and/or other financial analyses performed or relied upon in support of the Fairness Opinion's conclusions;**
- M. **A discussion of any bona fide offer or prior valuation or other material expert report considered by the Fairness Opinion issuer in coming to the Fairness Opinion's conclusions;**
- N. **A statement of the key assumptions made and significant representations relied upon; and**
- O. **A clear summary of the methodology, information and analysis underlying the Fairness Opinion sufficient to enable a reader to understand the basis for the Fairness Opinion conclusion.** (*Explanatory comment:* the summary should be presented in a manner that does not obscure the basis for the conclusion, although it does not need to provide information

sufficient to enable a reader to perform their own analysis or form their own conclusion).

P. **In circumstances where the Fairness Opinion will be disclosed to readers who may not be familiar with the proposed transaction, such as minority security holders in a material conflict of interest transaction, or where a board of directors, or a special committee thereof, will make disclosures to convey to security holders a meaningful understanding of the Fairness Opinion and how it was considered by them, the Fairness Opinion shall also include:**

- (a) **a description of the underlying businesses** (*Explanatory comment*: this may include historical and projected financial results or relevant growth trends);
- (b) **a discussion of the approaches used in the assessment of financial fairness;**
- (c) **relevant financial metrics for the transaction, and not merely a narrative description thereof.** (*Explanatory comment*: examples of relevant financial metrics include cash flow, cost of capital, implied internal rates of return, trading multiples of comparable public companies or recent stock trading prices for the subject shares); and
- (d) **a discussion of any other considerations in assessing financial fairness.**

8.3 **A Fairness Opinion shall disclose any restrictions that affect the fairness conclusion, as noted below:**

- A. **Where the Fairness Opinion issuer was limited in the scope of review or where information provided to the Fairness Opinion issuer was incomplete, disclosure should be made of the limitation and of the incomplete information, reasons given and the potential impact of such limitation on the Fairness Opinion conclusions; and**
- B. **Any qualifications or limitations to which the Fairness Opinion is subject.**

(*Explanatory comment*: to the extent the scope of review has been significantly restricted, or information provided is substantially incomplete, or any qualifications or limitations are material, the Fairness Opinion issuer should determine whether an opinion can reasonably be provided in the circumstances).

8.4 **It is recommended that Fairness Opinions also disclose any restrictions that affect the Fairness Opinion conclusion, as noted below:**

- A. **A statement restricting the use of the Fairness Opinion to the persons for whom it was prepared and only for the stated purpose; and**
- B. **A statement disclaiming responsibility for losses resulting from unauthorized or improper use of the Fairness Opinion.**

8.5 **The Fairness Opinion shall contain a conclusion as to fairness of the proposed transaction to the security holders (or to a group of security holders), from a financial point of view.** (*Recommendation*: the conclusion should include a reference

to the scope of review, key assumptions relied upon, and any restrictions and/or qualifications in the Fairness Opinion).

February 28, 2019