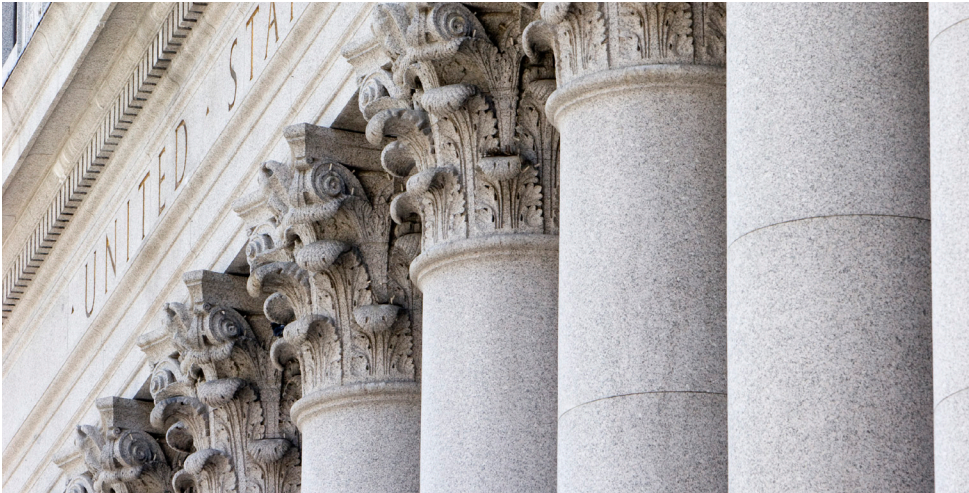




BDO VALUATION ADVISORS, LLC

CAPITAL SURPLUS OPINIONS



DESPITE A STILL UNCERTAIN ECONOMIC FUTURE, RECENT FINANCIAL MARKET ACTIVITY HAS DEMONSTRATED AN UPTREND IN NEW DEBT ISSUANCE. THE LOOSENING OF THE CREDIT MARKETS HAS OFFERED COMPANIES FLEXIBILITY TO MODIFY THEIR CAPITAL STRUCTURE USING LEVERAGE.

Through leveraged recapitalizations, companies and private equity firms are able to increase internal rates of return to shareholders by achieving partial liquidity sooner, while allowing shareholders to maintain a stake in the growth of the company and receiving additional future returns through a sale or public offering.

While Board of Director consent is typically necessary to authorize a special dividend or a stock redemption, the risks that such activities present should be thoroughly considered. Distributions that are too rich may leave the company without adequate capital and expose each director authorizing the dividend or stock redemption, including a private equity firm's board designees, to

personal liability. Companies and private equity firms need to implement appropriate procedures in connection with these types of transactions to limit potential exposure to themselves and their board designees. These procedures also demonstrate fiduciary responsibility.

Delaware Corporation Law and other states' corporation laws require that special dividends be paid out of "surplus." A dividend of this type may not be permitted if such a transaction results in impaired capital. The payment of any dividend in excess of the corporation's surplus will be deemed to be an impairment of the corporation's capital.

▶ [Read more on page 2](#)

DID YOU KNOW

- ▶ LOOSENING CREDIT MARKETS ARE ALLOWING FOR CAPITALIZATION FLEXIBILITY
- ▶ COMPANIES ARE USING LEVERAGED RECAPS TO ISSUE SPECIAL DIVIDENDS TO SHAREHOLDERS
- ▶ MANY STATES REQUIRE THAT SPECIAL DIVIDENDS BE PAID OUT OF SURPLUS
- ▶ A CAPITAL SURPLUS OPINION CAN HELP PROTECT THE BOARD OF DIRECTORS AND DEMONSTRATES FIDUCIARY RESPONSIBILITY

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► CAPITAL

A corporation's "capital" is defined, generally, as the portion of consideration it received for issued and outstanding shares of capital stock which the directors determine to be capital at the time of issuance, but in no event less than the aggregate par value of such shares.

► SURPLUS

A corporation's "surplus" is defined, generally as:

- the excess of the current fair value of the corporation's total assets,
- less the current fair value of the corporation's total liabilities,
- less the corporation's capital

These definitions leave a great deal of discretion to the Board of Directors in determining such values. Delaware case law makes it clear that **a corporation is not bound by its balance sheet and can use "going-concern" valuation methods in this context.** The "fair value" of the assets and liabilities are the determining factors, not simply book value.

► CAPITAL SURPLUS OPINION

Obtaining a Capital Surplus Opinion can be a key business decision for a company's Board of Directors to enable a leveraged recap. Under a Capital Surplus Opinion, the fair value and present fair saleable value of the company's assets are compared to its total liabilities, including contingent liabilities and

the liabilities that would be assumed as part of a potential transaction.

A Capital Surplus Opinion requires a thorough and complete valuation of the business enterprise and consideration of liabilities, including contingent liabilities. Such a valuation analysis should include full consideration of each of the relevant generally accepted valuation methodologies:

- 1) Income Approach
- 2) Market Approach (*including a Guideline Public Companies method and Market Transactions method*)
- 3) Underlying Assets Approach

The importance of a fully developed valuation analysis is paramount, as compared to an approximation derived using valuation "rules-of-thumb" or unsubstantiated estimates based on multiples of EBITDA or other metrics.

In selecting a valuation advisor to perform the requisite analysis and provide a Capital Surplus Opinion, it is of critical importance that companies and private equity firms consider both the experience of the advisor in providing such opinions as well as the advisor's independence.

BDO Valuation Advisors has a proven and successful track record of providing Capital Surplus Opinions as well as Transaction Opinions with rigorous analysis and objective support as the foundation for our conclusions.

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