

# 公允意见及偿付能力意见



在当今社会，法规审查愈加详细，公司管理愈加完善，在这一环境下，人们开始更加关注受托人尽职调查的独立、透明及严格性。若受托人未能满足这些要求，将可能带来代价高昂的后果，包括承担个人责任，甚至于股东权益遭受损害。

在达信评估服务部帮助下，董事会、专责委员会、员工股权计划的受托人和其他公司顾问可以做出更有充份考虑的决定，从而减少交易风险，确保交易的顺利进行。我们的意见能让董事会向所有利益方表明，董事会完全遵守了商业判断规则，即考虑周全，诚实守信及公司利益最大化。

## 公允意见

我们专注的专家团队擅长于对各种类型的控制权变更交易进行分析与评估，包括关联交易、内部

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达信评估服务部的评估专家能够提供独立的公允意见及偿付能力意见，帮助公司董事会、专责委员会及其他各方以确保所提议之交易为公允和恰当的。

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交易、投标报价、资产分拆及融资并购。在这一领域，我们既可以对涉及数十亿美元的上市公司的大额交易进行分析，同时也能为涉及数百万美元的私人公司的交易进行分析。

## 避免利益冲突

由于《萨班斯-奥克斯利法案》的出现，以及那些以达成交易收取费用的顾问所提出的公允意见的客观性存在争议，证券交易委员会、纽约证券交易所以及全国证券交易商协会均鼓励收购方与被收购方进行自身保护。根据他们的建议，参与潜在交易的董事们在谨慎的原则下应：

- 聘请独立的专家提供公允意见，该专家应完全独立，没有对涉及交易的公司提供有关交易的财务顾问服务。

- 从其它独立的财务专家处获得“第二份公允意见”。
- 保留如何挑选顾问的详细记录，以备可能面对的法庭质询。

### 偿付能力的意见

董事会和借款人在涉及杠杆交易、股票赎回和股利分配时，常常需要第三方提供关于偿付能力的意见以作为额外的保护。一份关于偿付能力的意见报告可保护董事会和借款人免受交易欺诈行为的侵害。

交易欺诈行为一旦被证实，该交易将会被暂停。涉案方可受到惩罚，例如赔偿相关费用，以及承担惩罚性损害赔偿。在美国的多个州内，如情况严重，甚至可触发刑事诉讼。

通过达信评估服务部关于偿付能力的意见，董事们与借款人可全面了解一家公司的偿付能力，从而极大程度上降低了被交易欺诈行为侵害的可能性，且达信评估服务部可以为董事会和借款人就交易中公司是否具有偿付能力提供完全独立公允的意见。

#### 联系人：

王克智

美国注册会计师 特许金融分析师  
工商管理硕士 法学学士

副总裁

达信评估服务部

电话 +852 2301 7263

andy.hc.wong@marsh.com

黎大汉

美国评估师协会认证资深评估师 特许金融分析师  
美国注册会计师商业评估专业 工商管理硕士

大中华区董事总经理

达信评估服务部

电话 +86 10 6533 4089

手机 + 86 139 1080 3546

sammy.lai@marsh.com

www.marsh.com.cn

# Fairness Opinions and Solvency Opinions



In today's environment of heightened regulatory scrutiny and improved corporate governance, emphasis has been placed on the independence, transparency and rigor of fiduciary due diligence. Failure for the fiduciary to meet these expectations can result in costly consequences, including being held personally liable or destroying shareholder wealth.

Marsh's work allows boards of directors, special committees, employee stock ownership plan trustees and other corporate advisors to make more informed decisions, mitigate the risk associated with the transaction and enhance the soundness of the transaction. Our opinions allow boards to demonstrate to all interested parties that they have acted within the business judgement rule – on an informed basis, in good faith and in the company's best interest.

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Marsh's valuation experts provide independent fairness opinions and solvency opinions to help corporate boards of directors, special committees, and other ensure that their proposed transaction is fair and adequate.

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## Fairness opinions

Our devoted team of experts are skilled in analysing and evaluating almost every type of change of control transaction, including affiliate and insider transactions, tender offers, spin-offs and leveraged buyouts. Our work in this arena spans from analyses for large transactions involving multi-billion dollar public companies to transactions involving multi-million dollar private companies.

## Avoiding conflicts of interest

In the wake of Sarbanes-Oxley and the controversy surrounding opinions performed by advisors whose fees rely on a completed deal, the SEC, NYSE and NASD encourage acquirers and targets to protect themselves. Based on these recommendations, prudent directors involved in a potential transaction should:

- Retain a third-party fairness opinion expert that is not advising the companies involved in the deal and can remain truly independent
- Receive a “second fairness opinion” from another independent financial expert
- Keep detailed records of how the consultant was selected should a court challenge arise

## Solvency opinions

Boards of directors and lenders often require a solvency opinion as additional protection in leveraged transactions, stock redemptions and dividend distributions. A solvency opinion provides boards and lenders with additional protection against a fraudulent conveyance attack.

In situations where a fraudulent conveyance is proven, the transfer will be set aside. The parties involved could incur other penalties such as recovery of costs involved and punitive damages. In many states, under flagrant circumstances, criminal charges may be filed.

A Marsh solvency opinion provides directors and lenders with a complete understanding of a company’s solvency and substantially reduces the risk of a fraudulent conveyance attack, and provides the board or lender considering a transaction with independent, conflict-free support that a company is solvent.

For more information, please contact:

Andy Wong, CFA, AICPA, LLB  
Vice President  
Valuation Services Practice  
+852 2301 7263  
andy.hc.wong@marsh.com

Sammy Lai, ASA, CFA, CPA/ABV, MBA  
Managing Director, Greater China  
Valuation Services Practice  
+86 10 6533 4089 | +86 139 1080 3546  
sammy.lai@marsh.com

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