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International Valuation Standards Council
41 Moorgate
London EC2R 6PP
United Kingdom

Re: Comments regarding IVSC Exposure Draft of Procedural Guidelines
for Fairness Opinions

Members of the IVSC Professional Board:

Capstone Valuation Services, LLC (“Capstone Valuation”), a wholly-owned subsidiary of Capstone Advisory Group, provides transaction-related opinions and other valuation opinions. Capstone Valuation issues fairness opinions to boards of directors and/or special committees of public and private companies alike. Based on our experience we appreciate the opportunity to provide you with the following responses to the IVSC Professional Board’s (the “Board”) questions regarding the Exposure Draft of the Procedural Guidelines for Fairness Opinions (“Guidelines”).

1 There are generally no laws or regulations that govern when a fairness opinion is required in the United States, however, the United States Securities and Exchange Commission (“SEC”) and the courts have clearly set expectations as to the types of transactions for which they would expect to see a fairness opinion. There are a few types of transactions involving certain non-profit companies and insurance businesses for which fairness opinions are required. The Guidelines, however, do not contradict existing laws or regulations nor do they contradict the standards suggested by the courts.

2 While some guidance is provided by FINRA and a significant body of work by fairness opinion providers exists, no specific format of the fairness opinion exists. Having said that, whether publicly-disclosed or not the essence of each fairness opinion is essentially the same. In the case of a non-disclosed opinion the board of directors or special committee receives a detailed presentation which reviews the underlying analysis of fairness and then receives a brief opinion summarizing the transaction, due diligence items, assumptions and, ultimately, the opinion on fairness. The process for a publicly-disclosed opinion is basically the same except a separate narrative is provided in the document distributed to the company’s stakeholders, for example a proxy, describing the valuation methodologies and ranges of value determined by the financial advisor.

Further scrutiny by the SEC provides further protection to shareholders. For example, in certain going private transactions the presentations made by the financial advisor may have to be filed with the SEC (Rule 13e-3).

3 a) The description in the Guidelines of what a fairness opinion is and also what it is not is consistent within the jurisdictions in which we operate.

b) Agreed

4 Agree with Board

5 The Guidelines, when read in conjunction with the Code, adequately cover the threats to the independence and objectivity of a financial advisor that are likely to arise in connection with a fairness opinion. We would like to point out that it is very common for the financial advisor to also act as the traditional investment banker, including assisting with the transaction strategy, structure, etc. and to receive a fee for these services that is contingent on the closing of transaction. Sometimes the fee for the fairness opinion is bifurcated from the compensation arrangement and is not contingent on some outcome, but the balance of the fees is contingent upon the completion of the transaction.

6 In general, the Guidelines, when read in conjunction with IVS 101, adequately identify the principal matters that should be considered in setting the scope of work and terms for a fairness opinion.

From a practical matter, however, not all of the matters listed in paragraph 21 of the Guidelines may be known when beginning a fairness opinion analysis. For example, until research is conducted the financial advisor may not know if there are relevant transactions to consider in developing that methodology. Also, the financial advisor will not necessarily know at the onset of the project what assumptions, if any, will be necessary for the analysis and, therefore, will not have an idea on the reasonableness and appropriateness of such assumptions.

7 We find that paragraphs 28-32 of the Guidelines to be helpful and sufficiently comprehensive. In paragraph 32(c), providing the definition of the term "fairness" is problematic. There is no specific definition in U.S. statutes nor an accepted definition in valuation literature that can be used. Financial advisors use the results of a variety of methodologies, sufficient due diligence and other factors to ascertain for themselves if a transaction is "fair".

Furthermore, the suggestion in paragraph 32(n) to describe within the fairness opinion the valuation approaches and methods used and the reasons for selecting them is not the norm in the US. As outlined in #2 above, this type of discussion is presented to the board of directors and, if publicly-disclosed, in a separate narrative contained in materials sent to shareholders.

8 The restrictions and limitations recommended in paragraph 32(r) are both reasonable and applicable.

9 The Guidelines appear to address the substantive matters as it relates to the users and providers of fairness opinions.

Very truly yours,



Bruce Bingham
Executive Director



William Epstein
Executive Director