

Delaware Chancery Court Distinguishes Remedies for Purchase Price Adjustments From Indemnification Claims in M&A Deals



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I. Introduction

The Delaware Chancery Court's decision in *Northern Data AG v. Riot Platforms, Inc.* erects a dividing line between post-closing purchase price adjustments ("PPA"s) evaluated by an accounting expert and representation and warranty claims reserved for indemnification. The Court confirmed that where the parties' agreement requires an expert to resolve purchase price disputes "in accordance with GAAP," GAAP serves as the governing baseline, and the Court will defer to the expert's determination. But when a dispute implicates legal questions about pre-closing facts and contractual representations and warranties, those issues cannot be shoehorned into the PPA process. The Court accordingly upheld the expert's determinations on two GAAP questions and vacated the expert's determinations on two indemnity issues that the Court held were outside the expert's authority.

II. Background

Northern Data AG, a German stock corporation that develops and operates computing infrastructure, was the owner of Whinstone US, Inc., a Delaware corporation that builds and runs data centers. In 2021, Riot Platforms, Inc., a Nevada-based Bitcoin mining company, along with its financial advisor Ernst & Young ("EY"), began exploring a potential acquisition of Whinstone from Northern Data. Whinstone and its advisors worked with EY and Riot towards this acquisition in early 2021 until the parties signed a Stock Purchase Agreement ("SPA") on April 8, 2021. Riot's acquisition was for a mix of stock and cash. The stock consideration was the dominant component and the cash consideration was subject to a post-closing true-up.

The PPA procedure was contained in Article II of the SPA, and provided for adjustments based on working capital, indebtedness, cash and transaction expenses. As is customary, the PPA procedure required Northern Data, as seller, to deliver an "Estimated Closing Statement" prior to the closing, on which Riot paid the initial purchase price, and Riot, as buyer, was required to deliver a "Proposed Final Closing Statement" after the closing, on which the cash consideration would be adjusted. Both the "Estimated Closing Statement" and the "Proposed Final Closing Statement" were to be prepared in accordance with GAAP, consistent with an illustrative closing statement attached as an exhibit to the SPA, which exhibit reflected the target company's historical practices. The buyer's delivery of the final closing statement would trigger a period for the seller to review the acquired company's financials and supporting information and state any objections. Any disputes that arise during this process that the parties could not resolve themselves would be submitted to an independent accounting expert who would act "as an expert and not as an arbitrator," and would make determinations "in accordance with GAAP." However the SPA made clear that the PPA process would not apply to representation and warranty related disputes, which were covered by an indemnification procedure with a damages cap, as provided in Article IX of the

SPA. The SPA provided that the indemnification provisions were the “sole and exclusive” remedy for breach of representation and warranty claims.

After closing, Riot submitted a Proposed Final Closing Statement. Northern Data timely served a Statement of Objections, and the parties ultimately submitted disputes to an accounting expert. The expert resolved four disputed items in Riot’s favor. Northern Data sued to vacate the expert’s determinations.

III. The Court’s Decision

The Court adopted a bifurcated standard of review consistent with the SPA’s mandate that the independent accountant would act “as an expert, not an arbitrator,” and thus, under Delaware Supreme Court precedent, the expert’s authority is “limited to its mandate to use its specialized knowledge to resolve a specified issue of fact.” *Terrell v. Kiromic Biopharma, Inc.*, 297 A.3d 610, 618 (Del. 2023). Thus, to the extent the expert was using his authority to resolve a factual dispute within his area of expertise, his decisions would be upheld subject to a manifest error standard, while any legal questions (including scope of the expert’s authority and the characterization of a dispute as an indemnification claim) were subject to de novo review by the Court.

The four disputed items split into two categories:

- Disputed Items 2 and 3: GAAP revenue recognition for upfront payments under hosting arrangements with a key customer.
- Disputed Items 1 and 4: Pre-closing receivables and liabilities implicating accuracy of seller’s representations, including the validity of accounts receivable and disclosure of indebtedness.

On Disputed Items 2 and 3, the Court upheld the expert’s determinations. The core issue was whether “engineering services” were distinct performance obligations from “hosting services” under Accounting Standards Codification (ASC) 606. The expert concluded they were not distinct and, as a result, the upfront payments were properly recognized in accordance with GAAP as deferred revenue to be amortized over the hosting term. According to Riot (and the Court agreed) the SPA’s directive to resolve disputes “in accordance with GAAP” placed GAAP at the top of the hierarchy; the illustrative closing statement and historical accounting practices served to narrow the choice among acceptable GAAP methods only where GAAP permitted discretion. Because the expert concluded GAAP left only one acceptable treatment, his determination was within his authority and not the product of manifest error according to the Court. The Court’s approach is consistent with other cases in which the Court had found that GAAP compliance operated as a “floor” and factors such as historical or illustrative practices operated only to select among GAAP-compliant alternatives. *See ArchKey Intermediate Holdings, Inc. v. Mona*, 302 A.3d 975 (Del. Ch. 2023).

On Disputed Items 1 and 4, the Court vacated the expert’s determinations. Both disputes turned on whether Northern Data’s pre-closing financial representations were accurate: one addressed whether an invoiced receivable had already been satisfied (double-billing), and the other concerned whether a pre-closing electricity liability should have been recognized as such. Both items directly implicated provisions in Section 4 of the SPA which stated that the seller and acquired company accurately represented their accounts receivable and indebtedness. According to the Court, both Disputed Item 1 and 4 involved pre-closing activities or statements, not changes in the target company’s business between signing and closing of the SPA. Only the latter type of dispute was subject to the PPA procedure and expert review. The Court held that Disputed Items 1 and 4 therefore raised legal questions of whether the parties complied with their representations and warranties, a determination outside the authority of the accounting expert. The Court recognized that Section 9.7 of the SPA required all representation and warranty issues, such as Disputed Items 1 and 4, to be resolved exclusively through the indemnification provisions. Not only did the agreement state explicitly that indemnification was the sole remedy for these disputes, but funneling them into

the PPA procedure for accounting disputes would also render the indemnification damages cap meaningless which the Court found further supported its conclusion.

The Court thus entered summary judgment: for Riot on Items 2 and 3 (expert determinations stand), and for Northern Data on Items 1 and 4 (expert exceeded authority; determinations vacated).

IV. Takeaways

Keep PPA and indemnification lanes separate. The Chancery Court's decision highlights the importance for M&A deal parties of clearly defining and demarcating post-closing remedies. The Court has recognized the distinction between pre-closing disputes (or disputes related to pre-closing factual items) and post-closing matters as a meaningful dividing line between methods of dispute resolution and has made it clear that it will not blur that line. Should parties desire, for any reason, to apply indemnification provisions to post-closing disputes or otherwise permit the pre- and post-closing provisions of a deal to cross this line, they must make their intentions very clear in the governing contract. What is more, even where disputes involve accounting matters, the Court indicated that if those issues related to representations and warranties, the PPA process cannot be invoked unless the operative agreement expressly permits it. A place for everything, and everything to its place, the Court seems to say, as the line drawn in *Northern Data* is strict and straightforward. The remedies for each phase of the deal must be clearly drafted with only the predicate acts applicable to them in mind.

Courts will still have a voice. The *Northern Data* decision is a reminder that the courts will retain a strong presence in resolving disputes even where parties utilize accounting experts under PPAs. While accounting experts remain useful and viable options for resolving issues within their area of expertise, the Court reminded parties that the authority of an expert cannot be expanded to encompass any matter which tangentially touches on the subject matter of their review. However, the Court also acknowledged that arbitrators are experts often chosen to resolve legal disputes. To the extent deal parties would like to avoid the formalities and expenses of a courtroom, it may be prudent to provide for both accounting experts and arbitrators in the PPA. What parties may not do is sweep non-accounting disputes or pre-closing disputes into the limited purview of an accounting expert.

If GAAP governs, GAAP governs. The Court also signaled to deal parties that where they invoke the guardrails of GAAP in guiding accounting experts' review, those standards will be given deference by the courts unless otherwise specified. The Court did not prohibit parties from deciding for themselves that one party's historical practice or particular financial and accounting practices should be the guiding light for accounting experts. However, the Court was clear that where GAAP is invoked without clear language to the contrary, courts will require compliance with GAAP above all else. Going forward, parties should carefully negotiate the desired accounting principles applicable to a transaction.

The headline of the Court's decision seems to be that deal parties should be very aware of the line between pre- and post-closing matters and take care in drafting any unique or customized alterations to the traditional deal structure. Additionally, the Court will not surrender its role to arbitrators and accounting experts; there is still a place for judicial review and parties that wish to avoid the expense of that process should think carefully about how they choose to do so.