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Delaware Court of Chancery Holds that Multiple Sources of Advancement Rights Should Be Considered Independently

In *Narayanan v. Sutherland Global Holdings Inc.*, the Court of Chancery found that where a former director of the company was entitled to advancement of his legal expenses from three separate conflicting sources (the company's certificate of incorporation, the bylaws and a separate indemnification agreement), the documents need not be considered together, but instead, absent evidence of intent to the contrary, should be considered separate and independent sources of advancement rights. As such, in situations involving multiple sources of expense advancement and indemnification rights, courts are likely to apply the provision granting the most expansive rights to the indemnitee. For the decision, click [here](#).

Delaware Court of Chancery Dismisses Post-Closing Merger Challenge Due to Fully Informed Stockholder Approval

In *Larkin v. Shah*, the Delaware Court of Chancery dismissed a stockholder challenge to a merger due to the cleansing effect of fully informed stockholder approval, applying the Delaware Supreme Court's *Corwin v. KKR Financial Holdings LLC* decision issued last quarter (discussed [here](#)). The *Larkin* opinion confirms that, pursuant to *Corwin*, unless a controlling stockholder (or group) stands on both sides of a transaction or receives a non-ratable benefit as to which the entire fairness standard applies *ab initio*, proper stockholder approval insulates transactions from fiduciary challenge on all grounds other than waste, and a plaintiff cannot avoid dismissal merely by alleging that a majority of the board harbored a conflict of interest or failed to exercise due care. Further, *Larkin* states that the business judgment rule is irrebuttably invoked. In addition, relying on *In re Volcano Corp. Stockholder Litigation* (discussed [here](#)), *Larkin* confirms that the tenders by a stockholder majority into a front-end offer under Section 251(h) of the General Corporation Law of the State of Delaware constituted stockholder approval sufficient to invoke the *Corwin* standard. For more, click [here](#).

Delaware Court of Chancery Finds that Entire Fairness Applies to Board's Decision to Enter into a Merger that Extinguished a Derivative Action

In *In re Riverstone National, Inc. Stockholder Litigation*, the Delaware Court of Chancery applied entire fairness to the Riverstone board's decision to enter into a merger agreement that released the board from certain stockholder derivative claims relating to usurpation of corporate opportunities. The Court found that the directors were interested in the transaction, as they obtained a

personal benefit in the merger agreement by extinguishing the derivative claims against them, and therefore, entire fairness applied. The Court noted, however, that the ruling was based on the particular, detailed facts plead in this case and should not provide a basis for future strike suits based on conclusory allegations that a potential derivative suit against directors was extinguished by a merger. For the decision, click [here](#).

Delaware Court of Chancery Dismisses Post-Closing Disclosure Claims for Failure to Show Disloyalty or Bad Faith

In *Nguyen v. Barrett*, the Delaware Court of Chancery dismissed post-closing claims that the board acted disloyally or in bad faith by failing to make the challenged disclosures. The Court also reiterated Delaware's strong preference that plaintiffs assert and pursue disclosure claims pre-closing so there is an opportunity to remedy these concerns prior to the stockholder vote. For more, click [here](#).

2016 Amendments to the Delaware General Corporation Law Go Into Effect

The 2016 amendments to the General Corporation Law of the State of Delaware (discussed [here](#)) (other than the amendments to Section 251(h) and Section 262) became effective on August 1, 2016. The amendments to Section 251(h) will be effective only with respect to merger agreements entered into on or after August 1, 2016. The amendments to Section 262 will be effective only with respect to transactions consummated pursuant to agreements entered into on or after August 1, 2016 (or, in the case of mergers pursuant to Section 253 of the DGCL, resolutions of the board of directors adopted on or after August 1, 2016 or, in the case of mergers pursuant to Section 267 of the DGCL, authorizations provided on or after August 1, 2016).

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M&A Markets

The following issues of M&A at a Glance, our monthly newsletter on trends in the M&A marketplace and the structural and legal issues that arise in M&A transactions, were published this quarter. Each issue can be accessed by clicking on the date of each publication below.

➤ [July 2016](#)

➤ [August 2016](#)

➤ [September 2016](#)

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