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Delaware Court of Chancery Finds Special Committee Beholden to Interested Stockholder and “Deeply Flawed” Sale Process Failed Entire Fairness Standard

In *FrontFour Capital Group LLC v. Taube*, the Delaware Court of Chancery, in an opinion by Vice Chancellor McCormick, held that the pending combination of asset management firm Medley Management, Inc. with two business development corporations it advises, Medley Capital Corporation and Sierra Income Corporation, was the result of “a deeply flawed process” tainted by conflicted insiders and approved by a special committee that negotiated with “willful blinders.” The court found, among other flaws in the process, that a majority of the Medley Capital special committee lacked independence from Medley Management and its founders (who also beneficially owned approximately 15% of Medley Capital), were unaware of standstill agreements entered into by Medley Management that prevented numerous third parties from making competing offers to acquire Medley Capital and agreed to contractual deal protections that “would pass muster under most circumstances, but not in this case.”

Nevertheless, the court declined to order Medley Capital to conduct a curative shopping process, as had been sought by the plaintiffs and which the court itself stated would be the “most equitable relief”; instead only temporarily enjoining the stockholder vote pending corrective disclosures related to the flawed process. Relying on the Delaware Supreme Court’s 2014 ruling in *C&J Energy*, the court ruled that it could not compel Medley Capital to violate the merger agreement’s “no shop” covenant without evidence that the counterparty, Sierra, aided and abetted the Medley Capital defendants’ breaches of fiduciary duty. For the court of Chancery opinion, click [here](#).

Delaware Court of Chancery Upholds Merger Termination Due to Buyer’s Failure to Send Required Extension Notice

In *Vintage Rodeo Parent, LLC et al. v. Rent-A-Center, Inc.*, Vice Chancellor Glasscock of the Delaware Court of Chancery ruled that Rent-A-Center validly terminated its pending acquisition by Vintage Capital following Vintage’s failure to send a required notice extending the merger agreement’s “End Date.” The *Rent-A-Center* opinion is a straightforward enforcement of contractual language that highlights the deference Delaware courts give to parties’ contractual agreements and the courts’ reluctance to excuse a sophisticated party’s failure to follow precisely contractually bargained-for procedures, even when those failures, in this case, lead to the loss of an \$800 million acquisition opportunity and possibility of paying a reverse termination fee of over \$125 million. For the Court of Chancery opinion, click [here](#).

Proposed 2019 Amendments to the DGCL and the Partnership, Limited Partnership and LLC Acts

The Corporation Law Section of the Delaware State Bar Association has released its proposed amendments to the General Corporation Law and other business entity statutes for 2019. One set of amendments across all statutes would streamline processes related to the signing of documents and delivery of notices electronically. For example, the proposed amendments would provide express clarification that execution by docusign is effective; in addition, the DGCL's default will no longer require affirmative stockholder consent to receive notices by e-mail, although the proposed amendments preserve a stockholder's right to opt-out of receiving notices by email. Other substantive changes include amendments to the Delaware Revised Uniform Limited Partnership Act, which track similar changes to the LLC Act made in 2018. The proposed changes include permitting "divisions" of a limited partnership, allowing for separate registration of a series of a limited partnership with the Secretary of State so that it is a "registered association" for purposes of the Uniform Commercial Code, and permitting formation of "public benefit" limited partnerships. While the proposed amendments have not yet been introduced or passed by the Delaware General Assembly, or signed by the Governor, the DSBA's annual amendment proposals usually are enacted as proposed. If enacted, the amendments would be effective as of August 1, 2019.

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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.

➤ [January 2019](#)

➤ [February 2019](#)

➤ [March 2019](#)

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