



Quorum - February 2025

February 28, 2025

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Delaware Supreme Court Reverses Court of Chancery on Standard of Review Applicable to Reincorporation Transactions in “TripAdvisor” Appeal



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In its [unanimous decision](#) rendered on February 4, 2025, the Delaware Supreme Court reversed the Delaware Court of Chancery’s ruling in the widely followed “TripAdvisor” case ([Palkon v. Maffei](#)) regarding the standard of review applicable to corporate reincorporations. The Delaware Supreme Court ruled that the TripAdvisor, Inc. (TripAdvisor) board’s decision to reincorporate from Delaware to Nevada is subject to the business judgment rule. In its ruling, the Supreme Court underscored its commitment to preserving board discretion in strategic corporate decisions while clarifying the circumstances under which entire fairness review will be required.

Background:

In 2023, the boards of directors for TripAdvisor and its controlling stockholder, Liberty TripAdvisor Holdings, Inc. (Holdings), approved a plan to change their respective corporate domiciles from Delaware to Nevada. This move was challenged by minority stockholders, which argued that the reincorporation would disproportionately benefit the companies’ directors and officers by reducing their potential liability exposure, given Nevada’s more management-friendly corporate laws. The plaintiffs contended that this conferred on the insiders a non-ratable benefit not shared by all stockholders, warranting a stringent “entire fairness” review of the transaction. The Chancery Court declined to enjoin the reincorporations to Nevada, but agreed with plaintiffs that the decisions to approve the reincorporations were subject to entire fairness review because the conversions resulted in a non-ratable benefit for the controller stockholders and directors who approved the transactions. The Chancery Court also suggested that the reincorporations may not have been entirely fair, largely due to the fact that the minority stockholders would not receive “the substantial equivalent of what they had before,” implying that the minority stockholders may have needed to receive some form of consideration for the transaction to be fair.

Decision:

The Supreme Court reversed the Chancery Court’s decision, determining that the business judgment rule, rather than the entire fairness standard, should apply to the reincorporations. The Supreme Court’s analysis focused on certain key factors:

- Materiality and Temporality: The Supreme Court found that neither the controlling stockholders nor the directors obtained a material, non-ratable benefit from the reincorporation. The Supreme Court emphasized that for the entire fairness standard to be triggered, any non-ratable benefit to the conflicted insiders must be material. In this case, the alleged benefit of reduced liability exposure under Nevada law as a general matter (and not with respect to any existing litigation or proposed corporate transaction) was deemed too speculative and not sufficiently material. The Supreme Court highlighted the importance of temporality in assessing the materiality of benefits, noting that there was no existing or threatened litigation against the directors or officers that would be impacted by the change in domicile. The absence of imminent or ongoing litigation meant that any reduction in liability exposure was contingent on uncertain future events. Accordingly, the Supreme Court concluded that such hypothetical and speculative impacts do

not meet the threshold for a material, non-ratable benefit that would necessitate entire fairness review.

- **Comity and Judicial Restraint:** The Supreme Court underscored the principle of comity, expressing reluctance to engage in comparative and quantitative evaluations of different states' corporate governance regimes. The Supreme Court recognized that directors consider a multitude of factors when determining the optimal state of incorporation, including, in addition to broad considerations with respect to corporate governance regimes, the court system, the composition of the judiciary, the state of the development of the case law in different jurisdictions and the familiarity of market participants with different states' legal regimes, noting that "none of these features is static, including statutory schemes at issue and their related case law developments." Absent well-pleaded allegations of material, self-serving conduct by directors (or controllers), the Supreme Court held that long standing Delaware policies of comity and judicial restraint favor deferring to the directors' business judgment in matters of corporate domicile.

Certain Takeaways:

The Supreme Court's decision in *Maffei v. Palkon* offers critical clarity on the standards governing judicial review of corporate reincorporation, providing that the business judgment rule applies unless plaintiffs are able to demonstrate that insiders received a material, non-ratable benefit—such as reduced liability exposure tied to existing litigation or a contemplated transaction—that would necessitate entire fairness review. Absent such specific and material existing conflicts, courts will defer to directors' business judgment, providing boards with greater latitude to determine the most advantageous state of incorporation without the heightened scrutiny of entire fairness review. Accordingly, the Supreme Court's decision may have the impact of accelerating the trend of companies exploring reincorporation options, particularly to states like Nevada and Texas, which have been perceived by some to have more business-friendly legal regimes. This shift has already been observed among various controlled companies, as illustrated by moves of high-profile firms like Tesla and Dropbox, each of which cited a preference for such regimes in their relocations.

Companies considering reincorporation should be aware of the fact that, while the Supreme Court's decision underscores the principle that reincorporations occurring on a "clear day" fall under the business judgment rule, the Supreme Court left open questions regarding the level of specificity required to demonstrate that a reincorporation was designed to avoid litigation risk, indicating that future case law may further clarify this threshold. Consequently, the ruling also highlights the importance of strategic planning for companies considering reincorporation. Controlled companies, in particular, should consider implementing processes to protect minority stockholders, such as establishing independent special committees and obtaining expert legal and financial advice to fully understand the impact of a potential reincorporation and ensure that the process aligns with fiduciary duties.

Legislation Proposed to Amend the Delaware General Corporation Law



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On February 17, 2025, a bipartisan coalition of Delaware lawmakers and the Governor proposed legislation that would, if enacted, address issues raised by recent Delaware judicial opinions and reincorporations by high-profile corporations to jurisdictions other than Delaware. [Senate Bill 21](#) would amend the Delaware General Corporation Law (DGCL) to clarify the legal protections directors, officers and controlling stockholders may obtain for a transaction that is approved by unconflicted directors or unconflicted stockholders. The legislation also provides definitions for whether a director may be considered conflicted and whether a stockholder may be considered a controller. Finally, SB21 would require that a stockholder's right to inspect a corporation's books and records be focused on core corporate documents.

If enacted, the legislation would, among other things:

Conflicted Transactions

- Provide safe harbor procedures for transactions in which directors or officers or controlling stockholders have interests or relationships that might render them interested or not independent with respect to a transaction.
- Under revised Section 144(a), certain acts or transactions involving directors or officers will be protected if approved or ratified by a majority of the disinterested directors or by a majority of the votes cast by the disinterested stockholders entitled to vote thereon, in each case upon disclosure or in full knowledge of the material facts giving rise to the conflict or potential conflict.
- Under new Section 144(b), a controlling stockholder transaction that does not constitute a "going private transaction" may be entitled to the statutory safe harbor protection if it is approved or recommended, as applicable, by a committee consisting of a majority of disinterested directors or approved or ratified by a majority of the votes cast by the disinterested stockholders.
- Under new Section 144(c), a controlling stockholder transaction that constitutes a "going private transaction" may be entitled to the statutory safe harbor protection if it is negotiated and approved or recommended, as applicable, by a committee consisting of a majority of disinterested directors and approved or ratified by a vote of a majority of the votes cast by the disinterested stockholders entitled to vote thereon.
- Define what constitutes a controlling stockholder.
- Under new Section 144(e), a controlling stockholder must own or control a majority in voting power of the stock of the corporation or have the "power functionally equivalent" to a stockholder that owns or controls a majority in voting power of the stock of the corporation by virtue of ownership or control of at least 33% in voting power of the stock of the corporation and power to exercise managerial authority over the business and affairs of the corporation.
- Provide that an independent board committee need only be comprised of a majority of independent directors (but cannot include the controlling stockholder) rather than fully independent.

- Not require that the use of an independent board committee or a majority of the minority stockholder vote be required as a condition to the transaction “ab initio” at the onset of negotiation of the transaction, as required under Delaware’s MFW line of cases.
- Provide that controlling stockholders and control groups, in their capacity as such, cannot be liable for monetary damages for breach of the duty of care. The amendments do not displace any safe harbor procedures or other protections available at common law.
- Provide that for publicly-listed companies, a director will be presumed to be a disinterested director if the board of directors shall have determined that such director is an independent director or satisfies the relevant criteria for independence under the applicable stock exchange.

Inspection Rights

- Define the materials that a stockholder may demand to inspect pursuant to a request for books and records of the corporation under Section 220 of the DGCL, which materials are limited to: organizational documents, minutes, stockholder communications, materials provided to the board and board committees and annual financial statements. The amendments also set forth certain conditions that a stockholder must satisfy in order to make an inspection of books and records.

Timing

The proposed legislation must be considered by the Delaware Legislature as a whole, and, if passed, signed into law by the Governor before the changes come into effect.

The Corporate Transparency Act's Reporting Obligations Are Back in Force



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The Corporate Transparency Act's (CTA) reporting obligations are back in effect after a nationwide court order blocking the CTA's implementing regulations was stayed on February 17, 2025. Most reporting companies are now required to file beneficial ownership information (BOI) reports by March 21, 2025.¹ Reporting companies should be prepared to file by the new deadline, even though that deadline could be extended by the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) or by legislation moving through Congress.

On February 17, 2025, the U.S. District Court for the Eastern District of Texas, citing a recent Supreme Court order in *McHenry v. Texas Top Cop Shop, Inc.*, granted a stay of an order that blocked implementation of the CTA's implementing regulations, including the BOI filing deadline.² The next day, FinCEN issued a notice announcing new BOI reporting deadlines.³ FinCEN's notice states that most reporting companies must file BOI reports by March 21, 2025.⁴

FinCEN's notice notes several exceptions to the March 21, 2025 deadline. Reporting companies that previously received a reporting deadline later than March 21, 2025, may still file their initial BOI reports by the later deadline.⁵ For example, for any reporting company that qualifies for disaster relief related to Hurricane Debby, Francine, Helene, or Milton, the reporting deadline remains April 23, 2025.⁶ In addition, plaintiffs in *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.)—namely, members of the National Small Business Association as of March 1, 2024—are not currently required to file BOI reports.⁷

While the CTA is back in effect with a new reporting deadline, several pending developments could affect the CTA's scope and deadline. FinCEN's notice states that between now and the March 21, 2025 reporting deadline, the bureau "will assess its options to further modify deadlines, while prioritizing reporting for those entities that pose the most significant national security risks."⁸ In addition, legislation pending in Congress, if enacted as law, would delay the reporting deadline to January 1, 2026 for all entities formed before January 1, 2024.⁹ Finally, FinCEN has announced plans, without elaboration, "to initiate a process this year to revise the BOI reporting rule to reduce burden for lower-risk entities, including many U.S. small businesses."¹⁰

The constitutionality of the CTA remains on appeal in the Eleventh Circuit, where a U.S. district court in Alabama found the CTA unconstitutional, and in *Texas Top Cop Shop* in the Fifth Circuit, where oral argument is scheduled for April 1, 2025.¹¹ In Michigan, Oregon, and Virginia, U.S. district courts have denied preliminary injunctions with respect to the CTA.¹² In Maine, a U.S. district court granted summary judgment, holding that the CTA is a valid exercise of congressional power.¹³

For now, the CTA and its implementing regulations remain enforceable. We will continue to monitor developments as they occur.

This article originally appeared as a Cadwalader Clients & Friends Memo. You can access that version [here](#).

- 1 FinCEN Notice, FIN-2025-CTA1, *FinCEN Extends Beneficial Ownership Information Reporting Deadline by 30 Days; Announces Intention to Revise Reporting Rule* (February 18, 2025) [hereinafter *FinCEN Extension Notice*], available at <https://fincen.gov/sites/default/files/shared/FinCEN-BOI-Notice-Deadline-Extension-508FINAL.pdf>.
- 2 Order, *Smith v. U.S. Dep't of the Treasury*, No. 6:24-cv-336-JDK (E.D. Tex. Feb. 17, 2025), ECF No. 39.
- 3 FinCEN Extension Notice, *supra* note 1.
- 4 *Id.*
- 5 *Id.*
- 6 See FinCEN Notice, FIN-2024-NTC8, *FinCEN Provides Beneficial Ownership Information Reporting Relief to Victims of Hurricane Debby; Certain Filing Deadlines in Affected Areas Extended Six Months* (Oct. 29, 2024), available at <https://fincen.gov/sites/default/files/shared/FinCEN-BOI-Notice-Debby-508FINAL.pdf>; FinCEN Notice, FIN-2024-NTC9, *FinCEN Provides Beneficial Ownership Information Reporting Relief to Victims of Hurricane Francine; Certain Filing Deadlines in Affected Areas Extended Six Months* (Oct. 29, 2024), available at <https://fincen.gov/sites/default/files/shared/FinCEN-BOI-Notice-Francine-508FINAL.pdf>; FinCEN Notice, FIN-2024-NTC10, *FinCEN Provides Beneficial Ownership Information Reporting Relief to Victims of Hurricane Helene; Certain Filing Deadlines in Affected Areas Extended Six Months* (Oct. 29, 2024), available at <https://fincen.gov/sites/default/files/shared/FinCEN-BOI-Notice-Helene-508FINAL.pdf>; FinCEN Notice, FIN-2024-NTC11, *FinCEN Provides Beneficial Ownership Information Reporting Relief to Victims of Hurricane Milton; Certain Filing Deadlines in Affected Areas Extended Six Months* (Oct. 29, 2024), available at <https://fincen.gov/sites/default/files/shared/FinCEN-BOI-Notice-Milton-508FINAL.pdf>.
- 7 *Beneficial Ownership Information*, FinCEN, available at <https://fincen.gov/boi> (last accessed Feb. 19, 2025).
- 8 FinCEN Extension Notice, *supra* note 1.
- 9 The House passed the *Protect Small Businesses from Excessive Paperwork Act of 2025* (H.R. 736) unanimously on February 10, 2025. A companion bill, S.505, is still pending in the Senate.
- 10 FinCEN Extension Notice, *supra* note 1.
- 11 Notice of Appeal, *Nat'l Small Bus. United v. Yellen*, No. 5:22-CV-1448-LCB (N.D. Ala. Mar. 11, 2024), ECF No. 54; Clerk's Memorandum, *Texas Top Cop Shop, Inc. v. Bondi*, No. 24-40792 (5th Cir. Feb. 11, 2025), ECF No. 220-1.
- 12 Case Management Order, *Small Bus. Ass'n. of Mich. v. Yellen*, No. 1:24-cv-314 (W.D. Mich. Apr. 26, 2024), ECF No. 24; Notice of Appeal, *Firestone v. Yellen*, No. 3:24-CV-1034-SI (D. Or. Nov. 18, 2024), ECF No. 19; Notice of Appeal, *Cmty. Associations Inst. v. Yellen*, No. 1:24-CV-1597 (MSN/LRV) (E.D. Va. Nov. 4, 2024), ECF No. 41.
- 13 Order on Cross-Motions for Summary Judgment, *Boyle v. Bessent*, No. 2:24-CV-00081-SDN (D. Me. Feb. 14, 2025), ECF No. 51.

In re Oracle Corporation Derivative Litigation: Delaware Supreme Court Affirms Chancery Court Decision Not to Impose Fiduciary Duties on an Influential Minority Stockholder



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On January 21, 2025, the Delaware Supreme Court affirmed the Court of Chancery's decision in *In re Oracle Corp. Derivative Lit.*, finding that a less than 50% stockholder does not owe fiduciary duties absent evidence of either general control over the corporation or transaction-specific control within the context of a particular deal.

The *Oracle* case arose out of Oracle's \$9.3 billion acquisition of NetSuite in 2016. NetSuite, a provider of cloud-based enterprise software, was originally presented to Oracle management as an acquisition candidate by Larry Ellison, Oracle's founder, former CEO and current director and 28% stockholder. As noted in the Delaware Supreme Court opinion, Mr. Ellison was also a co-founder of NetSuite, served as a director and owned a "substantial" equity position in NetSuite. When first introduced by Ellison, he recommended that Oracle wait for better timing to pursue an acquisition. A year later, Ellison made his views known to Oracle's management that he felt "the time is now" for an acquisition of NetSuite. Shortly thereafter, Oracle management put forward several potential acquisition targets for the Oracle board of directors to consider, including NetSuite, during which time Ellison recused himself from discussions. The board directed Oracle management to reach out and gauge NetSuite's interest in a transaction. Following these initial discussions, the Oracle board formed a special committee to review and negotiate a transaction with NetSuite, which excluded Ellison and retained independent financial and legal advisors. Oracle ultimately approached NetSuite with a proposed acquisition price, and after substantial negotiation agreed to acquire the company for \$109 per share, \$1 less than Oracle's internally discussed maximum of \$110 per share. The transaction was consummated through a tender offer conditioned on approval by a majority of NetSuite stockholders, exclusive of Ellison and NetSuite's officers and other directors.

Following the closing of the NetSuite acquisition, Oracle stockholders filed a derivative lawsuit against Ellison and members of the Oracle special committee accusing them of overpaying for NetSuite and claiming Ellison influenced the acquisition and caused Oracle to pay an inflated price, resulting in a gain of almost \$3.9 billion to Ellison in respect of his NetSuite holdings. After Oracle's initial motion to dismiss was denied by the Delaware Court of Chancery, a special litigation committee (SLC) was formed consisting of certain independent Oracle directors, to investigate and try to settle the suit, during which time the case was stayed by the Court of Chancery. Although the SLC engaged in numerous interviews and an extensive investigation, it was unable to make an informed determination, and returned the case to the Court of Chancery. At trial, and following the production of certain SLC materials, as ordered by the Court of Chancery, the court determined that although "Ellison had clout...[he] did not exercise general control" and did not influence the transaction with NetSuite.

On appeal, plaintiffs' principal argument was that Ellison was a controlling stockholder, standing on both sides of the transaction and therefore the Court of Chancery erred by applying the business judgment rule instead of the heightened entire fairness standard. Reviewing the stockholder claims *de novo*, the Delaware Supreme Court affirmed the Court of Chancery decision, guided by the general rule that "stockholders do not owe fiduciary duties to the corporation or its stockholders and are free to act in their self-interest." The Delaware Supreme Court noted that in certain circumstances, a "controlling" stockholder assumes

fiduciary duties but that such stockholder must either (i) own or control over 50% for “hard control” or (ii) be deemed to possess significant control despite holding only a minority of the corporation’s equity, a determination the court found would require “a combination of potent voting power and management control such that the stockholder could be deemed to have effective control of the board without actually owning a majority of stock.”

Because Ellison did not hold a majority of Oracle’s stock, the Delaware Supreme Court undertook an “intensely factual” analysis, pointing to several uncontested assertions to demonstrate Ellison did not exert control, including that he “scrupulously avoided” discussing the transaction with the special committee, that he did not propose or engage in the merger negotiations, that he did not interfere with the transaction and that he did not control day-to-day operations at Oracle.

The Court of Chancery had previously applied a five part test to assess what the court called the plaintiff stockholders’ “fraud on the board” theory (that Ellison was an interested director and breached his duty of loyalty by manipulating the board to his will through deception). However, the Delaware Supreme Court instead adopted a more streamlined analysis and assessed whether Ellison acted in good faith, which the Court noted requires candor, and disclosed any information about his role that was “relevant and of a magnitude to be important to directors in carrying out their fiduciary duty of care in decision making.” To this point, the suing stockholders alleged that Ellison failed to disclose his views on post-closing integration and the future operating plans of the companies. However, the Delaware Supreme Court was unmoved (i) noting that these plans were not material to the approval of the transaction and (ii) stating “with skepticism” that if Ellison had disclosed his views to the special committee, the suing stockholders “likely would have quickly pivoted and claimed that he breached his fiduciary duty by improperly exerting his influence over the Special Committee’s work.”

Delaware courts have recently opined on several alleged controlling stockholder transactions. The decision in *Oracle* further reinforces the standard that absent concrete factual support, an influential minority stockholder does not owe fiduciary duties to the corporation and its stockholders, even where the stockholder may have outsized power or the unused potential to influence decisions as the entity’s “visionary co-founder,” or where he or she stands to gain on both sides of a transaction. It also highlights the importance of establishing good fact patterns in such deals, which Oracle was able to do in its NetSuite deal through a carefully planned special committee process. Ultimately, parties should not shy away from transactions where there could be allegations of impropriety emerging from an influential stockholders’ role in the transaction, as proper planning and good governance processes can help mitigate the risk that after-the-fact stockholder allegations will turn into material liabilities.

Abandoning FCPA Would Endanger Ethical Shield for US Companies



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Cadwalader partner [Martin Weinstein](#) authored an article, “Abandoning FCPA Would Endanger Ethical Shield for US Companies,” published by Bloomberg Law on February 18.

With an [executive order](#) halting enforcement of the Foreign Corrupt Practices Act, the Trump administration [suspended](#) a law that long regulated corporate corruption and imposed significant penalties on bribery.

Read the full article [here](#).

SEC Staff Issues New Guidance Regarding Schedule 13D/G



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On February 11, 2025, the SEC staff published updates to two Compliance and Disclosure Interpretations (C&DIs) regarding the availability of Schedule 13G to certain investors, specifically concerning activities that could preclude an investor from reporting on Schedule 13G in certain circumstances. The C&DIs have been updated to revise Question 103.11 and include a new Question 103.12, the text of which are reproduced below.

Under the SEC rules, when any person directly or indirectly acquires more than five percent of a class of a public company's equity securities, that person must file a Schedule 13D with the SEC unless they qualify to file the shorter-form Schedule 13G. One category of persons who qualify to file on Schedule 13G are so-called "passive" investors who do not hold a company's equity securities "with the purpose or effect of changing or influencing the control of the issuer."

Traditionally, the SEC permitted such "passive" investors to have discussions with issuers on certain corporate governance topics while maintaining their ability to report on Schedule 13G. However, under the new C&DIs, "[a] shareholder who goes beyond such a discussion . . . and exerts pressure on management to implement specific measures or changes to a policy may be 'influencing' control over the issuer."

In particular, recommendations by investors that explicitly or implicitly condition support for one or more of an issuer's director nominees on the issuer effecting certain changes (*i.e.*, adopting an investor's recommendation(s)) may amount to "influencing' control over the issuer" and thus require the investor to file a Schedule 13D and provide more burdensome and onerous disclosures.

However, as noted in the SEC's new guidance, determinations about whether Schedule 13G is available to an investor are "based on all the relevant facts and circumstances" concerning both the subject matter and the context of the engagement with the issuer's management.

As a result of this new guidance, current Schedule 13G filers may begin to approach issuers with a higher degree of caution or seek to limit engagement altogether for fear of being subject to the more onerous Schedule 13D disclosure requirements. This in turn could limit the amount and variety of valuable shareholder input an issuer receives ahead of its shareholder meetings. Further, issuers may be compelled to focus their engagement efforts more directly on investors below the 5% reporting threshold, who are not subject to reporting on Schedule 13D or Schedule 13G.

Question 103.11

Question: The Hart-Scott-Rodino (HSR) Act provides an exemption from the HSR Act's notification and waiting period provisions if, among other things, the acquisition of securities was made "solely for the purpose of investment," with the acquiror having "no intention of participating in the formulation, determination, or direction of the basic business decisions of the issuer." 15 U.S.C. 18a(c)(9); 16 C.F.R. 801.1(i)(1). Does the fact that a shareholder is disqualified from relying on this HSR Act exemption due to its efforts to influence management of the issuer on a particular topic, by itself, disqualify the shareholder from initially reporting, or continuing to report, beneficial ownership on Schedule 13G?

Answer: No. The inability to rely on the HSR Act exemption alone would not preclude a shareholder from filing on Schedule 13G in lieu of the Schedule 13D otherwise required. Instead, eligibility to report on Schedule 13G in reliance on Rule 13d-1(b) or Rule 13d-1(c) will depend, among other things, on whether the shareholder acquired or is holding the subject securities with the purpose or effect of changing or influencing control of the issuer. This determination is based upon all the relevant facts and circumstances and will be informed by the meaning of “control” as defined in Exchange Act Rule 12b-2. [Feb. 11, 2025]

Question 103.12

- **Question:** Shareholders filing a Schedule 13G in reliance on Rule 13d-1(b) or Rule 13d-1(c) must certify that the subject securities were not acquired and are not held “for the purpose of or with the effect of changing or influencing the control of the issuer.” Under what circumstances would a shareholder’s engagement with an issuer’s management on a particular topic cause the shareholder to hold the subject securities with a disqualifying “purpose or effect of changing or influencing control of the issuer” and, pursuant to Rule 13d-1(e), lose its eligibility to report on Schedule 13G?
- **Answer:** The determination of whether a shareholder acquired or is holding the subject securities with a purpose or effect of “changing or influencing” control of the issuer is based on all the relevant facts and circumstances and will be informed by the meaning of “control” as defined in Exchange Act Rule 12b-2.
 - The subject matter of the shareholder’s engagement with the issuer’s management may be dispositive in making this determination. For example, Schedule 13G would be unavailable if a shareholder engages with the issuer’s management to specifically call for the sale of the issuer or a significant amount of the issuer’s assets, the restructuring of the issuer, or the election of director nominees other than the issuer’s nominees.
 - In addition to the subject matter of the engagement, the context in which the engagement occurs is also highly relevant in determining whether the shareholder is holding the subject securities with a disqualifying purpose or effect of “influencing” control of the issuer. Generally, a shareholder who discusses with management its views on a particular topic and how its views may inform its voting decisions, without more, would not be disqualified from reporting on a Schedule 13G. A shareholder who goes beyond such a discussion, however, and exerts pressure on management to implement specific measures or changes to a policy may be “influencing” control over the issuer. For example, Schedule 13G may be unavailable to a shareholder who:
 - recommends that the issuer remove its staggered board, switch to a majority voting standard in uncontested director elections, eliminate its poison pill plan, change its executive compensation practices, or undertake specific actions on a social, environmental, or political policy and, as a means of pressuring the issuer to adopt the recommendation, explicitly or implicitly conditions its support of one or more of the issuer’s director nominees at the next director election on the issuer’s adoption of its recommendation; or
 - discusses with management its voting policy on a particular topic and how the issuer fails to meet the shareholder’s expectations on such topic, and, to apply pressure on management, states or implies during any such discussions that it will not support one or more of the issuer’s director nominees at the next director election unless management makes changes to align with the shareholder’s expectations. [Feb. 11, 2025]