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Quorum

Insights Into Corporate Governance, M&A and Securities Law

Quorum - March 2025

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Delaware Governor Signs Senate Bill 21 into Law, Significantly Amending Delaware Corporate Law


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On March 25, 2025, Delaware Governor Matt Meyer signed into law Senate Bill 21, amending Sections 144 and 220 of Title 8 of the Delaware General Corporation Law (DGCL). The legislation responds to recent concerns over Delaware law and, as stated by the Governor, is intended to clarify "key governance structures to reinforce Delaware's reputation for equitable, predictable and efficient corporate oversight." The new legislation provides, among other items:

- a statutory safe harbor for conflicted transactions involving interested directors and officers;
- a statutory safe harbor for conflicted transactions involving controlling stockholders;
- clarification as to what constitutes a "controlling stockholder", providing bright-line requirements as to stock ownership and managerial control; and
- certain limitations with respect to the right of stockholders to inspect a corporation's books and records.

For a more detailed discussion of the amendments, please refer to the previous Cadwalader Quorum article on the bill, linked here.

Following unanimous approval in the Delaware Senate on March 13, the legislation passed in the Delaware House by a 32-7 vote. During a two hour debate, House members rejected five proposed amendments aimed at curtailing the scope of the legislation, including the addition of a proposed "opt-in" provision which would have required Delaware corporations to elect whether to be governed by the amendments. The debate saw significant bipartisan support, with both Democratic and Republican lawmakers backing the legislation as vital for Delaware's economy.

The legislation was initially introduced amid growing concerns over a rising trend of corporations reincorporating outside of Delaware, dubbed "DExit", drafted to protect Delaware's status as the leading corporate hub by offering more accessible protections for conflicted transactions involving officers and directors. Despite strong support from the business community, the legislation faced significant opposition, with critics contending that it could disproportionately favor large corporations and their management teams.

New DGCL § 144 and § 220, as amended, each took effect upon being signed into law. Reversing the course proposed by the Delaware Senate, as adopted SB 21 will apply retroactively unless (1) an action concerning the act or transaction is already completed or pending or (2) in the case of books and records demands, if such demand was made on or before February 17, 2025. Since it was first introduced, the bill drew the attention of the Council of the Corporation Law Section of the Delaware State Bar Association and numerous law firms and institutional investors. In adopting the law, the Governor's office thanked "lawmakers for the swift passage of this critical update to Delaware's corporate law, aimed at ensuring the state remains the premier home for U.S. and global businesses."

FinCEN Releases New Corporate Transparency Act Rule Exempting U.S. Entities and U.S. Beneficial Owners


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On March 21, 2025, the Financial Crimes Enforcement Network ("FinCEN") released a new interim final rule that exempts U.S. entities and U.S. beneficial owners from the reporting requirements of the Corporate Transparency Act ("CTA"). Under the interim final rule, which was published in the Federal Register on March 26, 2025, only foreign reporting companies, their non-U.S. beneficial owners, and company applicants are subject to the CTA's reporting requirements.[2]

FinCEN's new interim final rule redefines the term "reporting company" to include only entities that are both "formed under the law of a foreign country" and "[r]egistered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe."[3] A "State" is defined as "any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States."[4] The new rule also specifically exempts "domestic entities," which include each "corporation, limited liability company, or other entity" that is "[c]reated by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe."[5]

Foreign reporting companies are not required to report beneficial ownership information ("BOI") for any U.S. persons who are beneficial owners, and U.S. persons are exempt from the requirement to provide BOI "with respect to any reporting company for which they are a beneficial owner."[6] Foreign reporting companies with only U.S. beneficial owners are exempt from the requirement to report beneficial owners, but continue to be required to submit BOI reports to FinCEN that include information, such as the entity's full legal name, tax identification number, and company applicants.[7]

Notably, the new rule does not exempt U.S. persons from the requirement for reporting companies to provide the identifying information of company applicants. Thus, U.S. persons who are involved in a non-U.S. entity's filing of a registration to do business in a U.S. state or tribal jurisdiction may still be required to provide their name, address, and a unique identifying number from an identification document, such as a driver's license.[8]

The deadline for a foreign reporting company to file an initial BOI report, or to update or correct a previously filed BOI report, is April 25, 2025 or 30 days after the reporting company's first registration to do business in the United States, whichever comes later.[9]

This is likely not the last significant development regarding the CTA, even for domestic reporting companies and U.S. citizens. FinCEN is accepting comments on the interim final rule through May 27, 2025. While the interim final rule focuses on foreign reporting companies, a U.S. citizen who is a company applicant for a foreign reporting company must still provide identifying information on the entity's BOI report. Court proceedings contesting the constitutionality of the CTA are still pending in several courts, and the Fifth Circuit has requested briefing from the parties in one of the cases in light of the new rule.[10] Legislation is pending in Congress that would postpone the reporting deadline to January 1, 2026.[11] And the Treasury Department's March 2 announcement and FinCEN's corresponding new rule may strengthen efforts in Congress to repeal the CTA outright. Moreover, the Treasury Department's decision not to enforce the CTA against domestic reporting companies could be challenged in court, or could be reversed by a future presidential administration.

We will continue to monitor developments regarding the CTA as they occur.

Appendix available here.

1 *FinCEN Removes Beneficial Ownership Reporting Requirements for U.S. Companies and U.S. Persons*, *Sets New Deadlines for Foreign Companies*, FinCEN, *available at https://fincen.gov/news/news-releases/fincen-removes-beneficial-ownership-reporting-requirements-us-companies-and-us* (last accessed Mar. 26, 2025).

2 Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. 13688 (Mar. 26, 2025) [hereinafter Interim Final Rule], *available at* https://www.federalregister.gov/documents/2025/03/26/2025-05199/beneficial-ownership-information-reporting-requirement-revision-and-deadline-extension (last accessed Mar. 26, 2025). Appended to this publication is a redlined version of FinCEN's announced changes to 31 C.F.R. § 1010.380. All citations to this redlined document are referred to as "Redlined 31 C.F.R. § 1010.380."

3 Redlined 31 C.F.R. § 1010.380(c)(1)(ii).

4 *Id.* at (f)(9).

5 *Id.* at (c)(2)(xxiv).

6 *Id.* at (d)(4)(i) and (ii).

7 *Id.* at (d)(4)(i); *see also* Interim Final Rule, *supra* note 2, at 13690.

8 *See* Redlined 31 C.F.R. § 1010.380(e)(2) and (3).

9 Interim Final Rule, *supra* note 2, at 13690.

10 Court Directive, *Texas Top Cop Shop*, *Inc. v. Bondi*, No. 24-40792 (5th Cir. Mar. 24, 2025), ECF No. 344.

11 The U.S. House of Representatives 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 U.S. Senate.

FDIC Seeks Comment on Proposal To Rescind Its 2024 Statement of Policy on Bank Merger Transactions


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The Federal Deposit Insurance Corporation (FDIC) is requesting[1] public comment on its proposal to rescind its 2024 Statement of Policy on Bank Merger Transactions[2] (2024 Policy Statement) and reinstate its prior Statement of Policy on Bank Merger Transactions (Prior Policy Statement).[3]

Comments are due no later than 30 days after the request for comment is published in the Federal Register. (As of the date of this Alert, the request for comment has not been published in the Federal Register.) The FDIC stated in its accompanying Financial Institution Letter that at a later date it intends to ask for comment "on all aspects of the regulatory framework governing the FDIC's review of bank merger transactions." The Department of Justice, which, both by statute and custom, consults with the FDIC (and the Federal Reserve and Office of the Comptroller of the Currency, depending on the type of bank charter) on bank merger transactions, has not yet indicated an intention to reconsider its competitive effects analysis of bank mergers. Whether this suggests an inconsistency in the Trump Administration's approach to bank mergers or just a timing issue will become clearer in time.

Rationale for the Request for Comment

The Biden Administration adopted an extensive competitive effects analysis for the approval of bank mergers in two ways: (i) the adoption of the 2024 Policy Statement,[4] which significantly expanded the criteria against which a bank merger would be evaluated, as compared to the Prior Policy Statement; and, (ii) withdrawal from the 1995 Bank Merger Guidelines of the Department of Justice, as replaced by a 2024 Banking Addendum to the 2023 Department of Justice and Federal Trade Commission Merger Guidelines (2023 Merger Guidelines).

The 2024 Policy Statement indicated that the FDIC, in conjunction with the participation of the Department of Justice, would evaluate the potential competitive effects of bank mergers subject to its jurisdiction in accordance with the competitive effects theories incorporated in the 2023 Merger Guidelines.[5] This has had significant market effects. Implementation of the 2024 Policy Statement "has added considerable uncertainty to the merger application process" in part by "deemphasiz[ing] the use of the Herfindahl-Hirschman Index (HHI) [concentration] thresholds in the competitive effects analysis", "replac[ing] it with more subjective criteria" and "plac[ing] an affirmative burden [on parties] to demonstrate that a merger transaction" will better enable the surviving entity to "meet the convenience and needs of the community" absent the merger.[6] The 2024 Policy Statement has made the bank merger review process "less transparent and less predictable."[7]

In anticipation of a more comprehensive review of the analytic framework for evaluating bank mergers, the FDIC has proposed re-adoption of the Prior Policy Statement "which is well understood by the public and market participants."[8] Unlike the 2024 Policy Statement and the 2023 Merger Guidelines, the Prior Policy Statement places significant weight on the post-merger HHI and the change in HHI, in identifying banking mergers unlikely to raise competitive concerns. Under the Prior Policy Statement, the FDIC would not normally deny a proposed merger for competitive reasons where (i) the post-merger HHI concentration level in a relevant geographic market was 1800 or less, or (ii) where the increase in the HHI concentration level due to the merger was less than 200 points.[9] Where a transaction failed these screens, the FDIC would take into account the strength of other participants in the market, and the likelihood of new entry into the market or expansion by current market participants.[10]

Commentary

The FDIC's interim adoption of the Prior Policy Statement, and its more focused and predictable competitive effects analysis, conflicts with the Trump Administration's continued adherence to the 2023 Merger Guidelines[11] and the 2024 Banking Addendum. Continued reliance on the 2023 Merger Guidelines, either directly by the FDIC in its competitive effects analysis or indirectly through consultation with the Attorney General (as required by statute), consistent with the 2024 Bank Addendum to the 2023 Merger Guidelines, risks maintaining the negative effects of the 2024 Policy Statement. Comments may wish to address not only the adoption of the Prior Policy Statement but seek clarity on the continuing relevance of the DOJ's 2024 Banking Addendum to the 2023 Merger Guidelines.

This article originally appeared as a Cadwalader Clients & Friends Memo. You can view it here.

1 Federal Deposit Insurance Corporation, RIN 3064-ZA45, Statement of Policy on Bank Merger Transactions (March 3, 2025) ("Request for Comment"). The Federal Deposit Insurance Act prohibits an insured depository institution ("IDI") from engaging in a bank merger transaction except with the prior approval of the responsible Federal banking agency. The FDIC has jurisdiction to act on merger transactions that solely involve IDIs in which the acquiring, assuming, or resulting institution is an FDIC-supervised institution and also has jurisdiction to act on merger transactions that involve an IDI and any non-insured entity. 12 U.S.C. §1828(c)(1), (2).

2 Federal Deposit Insurance Corporation, Final Statement of Policy on Bank Merger Transactions, 89 FR 79125 (Sept. 17, 2024) ("2024 Policy Statement").

3 The Prior Policy Statement was first published in 1998, and modified in 2002 and 2008. See 63 FR 44761 (Aug. 20, 1998), 67 FR 48178 (Jul. 23, 2002), 67 FR 79278 (Dec. 27, 2002), and 73 FR 8870 (Feb. 15, 2008). The Prior Policy Statement is republished in the request for comment.

4 The OCC under the Biden administration also adopted revised merger guidelines consistent with President Biden's Executive Order on competition. *See* Business Combinations Under the Bank Merger Act, OCC-2023-0017 (Sept. 25, 2024) (to be codified at 12 C.F.R. pt. 5) ("OCC Final Rule").

5 2024 Policy Statement, 89 FR at 79136 ("The FDIC's analysis ... is informed by the Department of Justice's approach to evaluating competitive effects.")

6 Request for Comment at 3-4.

7 Id. at 4.

8 Id.

9 The 2023 Merger Guidelines adopt a different threshold for changes in market concentration that creates a presumption of illegality. See 2023 Merger Guidelines, at 7 (Post-Merger HHI of greater than 1800, combined with a change in the HHI of greater than 100.).

10 See Request for Comment, at 12.

11 Memorandum from Acting Assistant Attorney General Omeed Assefi to DOJ Antitrust Division Staff Regarding Use of the 2023 Merger Guidelines (Feb. 18, 2025), Mr. Assefi's position reflects the position of Gail Slater, President Trump's nominee for Assistant Attorney General, Antitrust (DOJ). *See* Questions for the Record, Nomination of Abigail Slater for Department of Justice, 119th Congress (2025-2026) (Response to Senator Peter Welch, Question 1.) See

also Memorandum from Chairman Andrew N. Ferguson to FTC Staff Regarding Merger Guidelines (Feb. 18, 2025).

SEC Updates Guidance on Lock-Up Agreements and Cash Tender Offers

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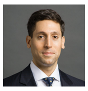

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The Securities and Exchange Commission (SEC) has recently updated Compliance and Disclosure Interpretations (C&DIs) regarding lock-up agreements and tender offers, offering notable clarifications for corporations considering these transactions.

Lock-Up Agreements: The SEC has clarified the rules around obtaining voting commitments or written consents from target company insiders in public M&A transactions. Commonly, acquirors seek voting commitments in support of a transaction from target company insiders, before the transaction is announced and/or a proxy statement is filed. In the context of a stock-for-stock merger, it has not previously been clear whether these voting commitments constituted investment decisions under the Securities Act of 1933 (Securities Act), thereby impacting the ability of the acquiror to register the offer and sale of its securities to be issued as part of the transaction. Under the revised C&DI, acquirors can now register the stock issuable to other target shareholders, on an S-4 or F-4, even when insiders have signed lock-up agreements. More specifically, the SEC will not object to the registration of the acquiror's shares as long as the following conditions are met:

- The lock-ups involve only target company insiders (executive officers, directors, affiliates, founders, 5% holders, etc.).
- Less than 100% of the target company's voting equity is controlled by those insiders.
- Votes are solicited from target shareholders who have not signed lock-ups if needed for approval under applicable law.
- The acquiror delivers a prospectus to all target company shareholders entitled to vote.

This update allows the registration of shares on Form S-4/F-4 to all security holders of the target company who did not already consent to the transaction, provided all insiders that did will acquire securities pursuant to a valid Securities Act exemption.

All-Cash Tender Offers: The SEC has also issued five new C&DIs on cash tender offers, clarifying various scenarios under Regulation 14D:

- **Duration of Offer Following Material Change (CDI 101.17):** All-cash tender offers must generally remain open for at least five business days after disclosing a material change. However, a shorter period may be acceptable if security holders have enough time to consider the new information.
- **Securing Committed Financing After Launch (CDI 101.18):** If the offeror secures committed financing after launching a tender offer that was previously unfinanced, it constitutes a material change, requiring prompt disclosure and an amendment to Schedule TO.
- **Fully Financed Offers (CDI 101.19):** A "highly confident" letter is not sufficient to consider a tender offer fully financed. However, an offer will be considered fully financed if accompanied by a binding commitment from a lender to provide the funds necessary.

- **Substitution of Funding Source (CDI 101.20):** Where an offeror in a fully financed cash tender offer decides to use an alternative funding source or available cash, this substitution is not considered a material change. The offeror should still consider updating the tender offer materials to reflect the substitution of the funding source and any new material terms.
- **Funding or Default Under Binding Commitment Letters (CDI 101.21):** If a lender either defaults or the offeror otherwise conditions the tender on receipt of financing which otherwise does not come through but the offeror waives the funding condition because it is able to access alternative funds, no material change will be deemed to have occurred requiring amendment to the Schedule TO. However, if the offeror waives the funding condition without an alternative funding source, this is a material change and must be disclosed promptly, along with an amended filing and prompt disclosure. The offeror should also consider whether the lack of funding could implicate other tender offer provisions, such as the prompt payment requirement.

The SEC's updated guidance for M&A lock-up agreements and cash tender offers provides increased certainty for companies involved in these transactions, particularly by clarifying when changes require disclosure and how to handle financing and funding issues in tender offers.

SEC Issues Updated Guidance for Nonpublic Review of Draft Registration Statements


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On March 3, 2025, the staff of the SEC's Division of Corporation Finance announced that it is expanding the accommodations available for issuers that submit draft registration statements for nonpublic review.[1] This announcement was consistent with the statement made by Mark T. Uyeda, Acting Chair of the U.S. Securities and Exchange Commission (the "SEC"), as part of his remarks at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference, that "the Commission has begun the process of returning to its narrow mission to facilitate capital formation, while protecting investors and maintaining fair, orderly, and efficient markets."[2]

Overview of Expanded Accommodations

The newly announced accommodations, among other things:

- Expand the availability of nonpublic review to include Forms 10, 20-F, and 40-F filed to register a class of securities under Section 12(g) of the Securities Exchange Act of 1934, as amended (the "Exchange Act").
- Eliminate the twelve-month limitation on draft registration statement submissions following the issuer's initial public offering.
- Expand the availability of nonpublic review to include certain "de-SPAC" transactions where the SPAC is the surviving entity.
- Permit issuers to omit underwriter names from the initial draft registration statements, so long as this information is disclosed in subsequent submissions and public filings.

Background of the SEC Review of Draft Registration Statements

In 2012, the Jumpstart Our Business Startups Act (JOBS Act) introduced confidential filing privileges by allowing Emerging Growth Companies (EGCs) to submit draft registration statements for initial public offerings for nonpublic SEC staff review.

In 2017, the SEC expanded the availability of confidential filing privileges by announcing that it would review, on a nonpublic basis, draft registration statements submitted by non-EGC issuers seeking to conduct an initial public offering under the Securities Act of 1933, as amended (the "Securities Act") or Section 12(b) of the Exchange Act, and would also accept for nonpublic review draft registration statements submitted prior to the end of the twelfth month following the effective date of an issuer's initial Securities Act registration statement or an issuer's Exchange Act Section 12(b) registration statement.

The newly announced enhanced accommodations build on this guidance by further expanding the availability of confidential review of draft registration statements. The differences between the past and updated guidance are summarized in the chart below.

Comparison of Past and Updated SEC Accommodations

	Past SEC Accommodations and Practices	*Updated SEC Guidance*
Nonpublic review of initial public offerings and initial Exchange Act registrations	Nonpublic review available for draft initial registration statements submitted under: · the Securities Act (initial public offerings); and · Section 12(b) of the Exchange Act.	Nonpublic review available for draft initial registration statements submitted under: · the Securities Act (initial public offerings); · Section 12(b) of the Exchange Act; and · Section 12(g) of the Exchange Act, including initial registrations on Forms 10, 20-F, and 40-F.
Nonpublic Review of Subsequent ("Follow-On") Offerings	Nonpublic review available for subsequent draft registration statements submitted prior to the end of the twelve-month period following the effective date of an issuer's initial Securities Act registration statement or an issuer's Exchange Act Section 12(b) registration statement.	Nonpublic review available for any offering under the Securities Act or registration of a class of securities under either Section 12(b) or Section 12(g) of the Exchange Act regardless of how much time has passed since the issuer became subject to the reporting requirements of Section 13(a) or 15(d) of the Exchange Act.
De-SPAC Transactions	Nonpublic review not available for de-SPAC transactions.	Nonpublic review available for registration statements submitted for de-SPAC transactions where the SPAC survives the business combination as the public company, if the co-registrant target company would otherwise be independently eligible to submit a draft registration statement. An issuer is permitted to submit a de-SPAC transaction registration statement as if it were an initial Securities Act registration statement (i.e., an initial public offering).
Content of Draft Registration Statements	Pursuant to Items 501 and 508 of Regulation S-K, issuers must disclose the names of underwriters within the initial submissions.	Issuers may omit the names of underwriters from the initial submissions, provided that they include the name of the underwriter(s) in subsequent submissions and public filings.

Additional Notes

Timing Considerations

- The Staff's announcement notes that a registration statement on Form 10, 20-F, or 40-F for registration under Section 12(b) of the Exchange Act goes effective automatically 30 calendar days after the SEC receives approval of the company's listing from the national securities exchange, and a registration statement on Form 10, 20-F, or 40-F for registration under Section 12(g) of the Exchange Act goes effective automatically 60 calendar days after the company files the registration statement. Accordingly, issuers will need to publicly file Exchange Act registration statements on Forms 10, 20-F, and 40-F so that the full 30- or 60-day period, as applicable, will run prior to effectiveness.

- In addition, the nonpublic submission does not satisfy an issuer's requirement to file the registration statement within 120 calendar days from the end of its fiscal year when required to register a class of securities under Section 12(g). The Staff's announcement notes that issuers availing themselves of the accommodation to submit the registration statement nonpublicly should do so early enough to receive staff comments and still meet the public filing deadline.

Public Filing of Draft Registration Statement

- The Staff's announcement notes that an issuer should file the draft registration statement it had previously submitted for nonpublic review at the time it publicly files its registration statement.

- The Staff's announcement also reminds issuers that that they should consider the SEC's Rule 83 confidential treatment request procedures in submitting draft registration statements for nonpublic review. Where possible, the Staff will keep submitted nonpublic draft registration statements and related correspondence confidential subject to the provisions of applicable law.

Cover Letters

- Consistent with past practice, an issuer submitting draft initial registration statements on a nonpublic basis must confirm in a cover letter to the nonpublic draft submission that it will publicly file its registration statement and nonpublic draft submissions at least 15 days prior to any road show or, in the absence of a road show, at least 15 days prior to the requested effective date of the registration statement.

- An issuer submitting a subsequent draft registration statement for nonpublic review should confirm in its cover letter that it will file its registration statement and nonpublic draft submission such that they are publicly available on the EDGAR system at least two business days prior to any requested effective time and date. The two business-day period in the enhanced accommodation is consistent with the two business days in Rule 461 for requesting acceleration of the registration statement effective date.

Substantial Completeness; Omission of Financial Information

- The Staff's announcement notes that an issuer should take all steps to ensure that a draft registration statement is substantially complete when submitted.

- However, the Staff will not delay processing if an issuer reasonably believes omitted financial information will not be required at the time the registration statement is publicly filed.

EGCs and Foreign Private Issuers

- Enhanced accommodations do not limit the process by which EGCs submit draft registration statements for confidential review, and the SEC will continue to process those submissions and filed registration statements in the normal course.

- Instead of submitting draft registration statements under the enhanced accommodations, foreign private issuers may elect to proceed in accordance with the procedures available to EGCs (if they qualify as EGCs), or follow the SEC's previous guidance with respect to foreign private issuers.

Conclusion

According to Cicely LaMothe, Acting Director of the SEC's Division of Corporation Finance, the "enhanced accommodations will further support capital formation while retaining investor protections available to purchasers in public offerings".[3] Given the significance of newly announced enhancements, including the expanded form eligibility, the accommodation of certain de-SPAC transactions, the removal of time restriction for post-IPO registrations, and the underwriter disclosure flexibility, the SEC's Division of Corporation Finance updated guidance can be expected to facilitate capital formation and increase access to public capital markets for both new and existing issuers.

[1] SEC.gov | Enhanced Accommodations for Issuers Submitting Draft Registration Statements | https://www.sec.gov/newsroom/whats-new/draft-registration-statement-processing-procedures-expanded

[2] SEC.gov | Remarks at the Florida Bar's 41st Annual Federal Securities Institute and M&A Conference | https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-florida-bar-022425

[3] SEC.gov | SEC Staff Facilitates Capital Formation for Companies Planning Public Offerings | https://www.sec.gov/newsroom/press-releases/2025-50

Securities Litigation Alert: Second Circuit Applies Fraud-on-the-Market Presumption to Section 10(b) Claims Based on Missed Appraisal Opportunity


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On February 3, 2025, in *In re Shanda Games Limited Securities Litigation*, a divided panel of the U.S. Court of Appeals for the Second Circuit, allowed a putative investor class to proceed with securities fraud claims under Section 10(b) of the Securities Exchange Act of 1934 based on their acceptance of an allegedly undervalued tender price in a freeze-out merger. Notably, the Court determined that at the pleadings stage, investors could utilize the fraud-on-the-market presumption (applicable to securities traded in efficient markets) to establish that they relied on defendants' alleged misrepresentations in failing to seek a fair market value determination of their shares through appraisal.

In re Shanda signifies a novel use of the fraud-on-the-market presumption, which typically arises in putative class actions alleging that investors relied on a stock's artificially inflated (or deflated) market price in purchasing or selling shares at a loss. Under *In re Shanda*, the presumption applies equally where an investor decides to hold shares and receive contractually set merger consideration instead of opting for judicially determined appraisal. The decision arguably expands the Section 10(b) cause of action in the Second Circuit, and could prompt some investors to look to Section 10(b) as an alternative to more traditional appraisal remedies available under state law.

Background

Shanda Games Limited ("Shanda") was a video games business registered in the Cayman Islands and headquartered in China. Shanda's shares were publicly traded as American Depository Shares ("ADS") on the NASDAQ. Shanda's main asset was the right to market a computer game, "Mir II," in China. In mid-2013, Shanda began developing a mobile version of Mir II called "MIIM." Shanda invested substantial resources in MIIM, and initial testing proved successful.

In 2014, Shanda's CEO, Yingfeng Zhang, joined a group of potential company suitors that collectively owned over 70% of Shanda's outstanding shares and controlled over 90% of its voting power. In April 2015, Shanda's board of directors approved a freeze-out merger, whereby Shanda would purchase all shares held outside the buyer group and merge with an entity wholly owned by the buyer group. Minority shareholders stood to receive \$3.55 per share, or \$7.10 per ADS, in the freeze-out merger.

The buyer group held enough shares to approve the merger unilaterally under Cayman Islands law. Shanda, however, was still required to put the merger up for a shareholder vote to allow dissenters the opportunity to object prior to seeking appraisal (*i.e.*, a determination of the fair market value of their shares) in a Cayman Islands court. The vote was held in November 2015, and the merger was approved. Like most other minority shareholders, David Monk did not object, instead cashing out his 6,500 ADS at \$7.10 per ADS. Meanwhile, three dissenting shareholders objected and pursued appraisal in the Cayman Islands. On March 6, 2018, a Cayman Islands court found that the merger price did not reflect the fair value of the shares and awarded the dissenting shareholders \$6.43 per share or \$12.84 per ADS.

Shareholder litigation followed in the U.S. District Court for the Southern District of New York. There, minority shareholders asserted putative class claims against Shanda, Zhang, the former CFO, and Shanda directors under Sections 10(b), 20A, and 20(a) of the Securities Exchange Act of 1934. As alleged, in the lead up to the freeze-out merger, defendants misled investors by downplaying the company's financial prospects, including the anticipated success of MIIM. The scheme allegedly deflated Shanda's market price and induced minority investors to accept an artificially low tender price, rather than selling their shares in the open market or seeking appraisal. Monk was appointed lead plaintiff.

The district court (Hon. Andrew L. Carter, Jr.) granted defendants' motion to dismiss the Section 10(b) claims. The court held that plaintiff adequately alleged misrepresentations, as well as scienter, as defendants had the motive and opportunity to depress Shanda's stock to "secure a low transaction price."[1] The court further held that plaintiff adequately alleged reliance based on the fraud-on-the-market presumption, which presumes that "'the market price of shares traded on well-developed markets reflects all publicly available information, and, hence, any material misrepresentations.'"[2] The district court concluded that plaintiff demonstrated that Shanda's shares traded in an efficient market, a prerequisite to pleading reliance through the fraud-on-the-market presumption.[3]

Nonetheless, the district court dismissed the Section 10(b) claims for failure to plead loss causation. In the district court's view, plaintiff failed to substantiate that the alleged misrepresentations caused economic loss to the class, given that the only issue for ADS holders to decide was whether to hold the shares (and receive the merger price, not the market price) or object and seek appraisal.[4] Monk timely appealed.

The Second Circuit's Decision

A divided Second Circuit panel affirmed in part and vacated in part, permitting Monk's Section 10(b) claims to proceed. In particular, the majority (Chief Judge Debra Livingston, joined by Judge Raymond Lohier) agreed with the district court that plaintiff could utilize the fraud-on-the-market presumption to establish reliance. The court explained that it is reasonable to presume that most investors who acquire or divest themselves of stock rely upon a stock's market price to ascertain that stock's value. Thus, in the majority's view, it is also reasonable to presume that investors "rely on the market price as an accurate measure of his stock's value when deciding to tender."[5] The majority placed particular weight on the allegation that absent defendants' misrepresentations and with a higher market price, Monk would have dissented from the merger and exercised his appraisal rights.[6]

Unlike the district court, however, the majority held that Monk sufficiently pled loss causation. The majority explained that, under Second Circuit precedent, a shareholder's failure to exercise appraisal rights may constitute cognizable loss under the securities laws: a minority shareholder may be injured in the freeze-out merger not only from the occurrence of the merger itself, but through "the loss of his appraisal right."[7] Here, the majority observed, Monk sufficiently alleged that he suffered loss when he accepted the tender price as a result of misleading statements in the proxies, as opposed to achieving a higher value for his shares through judicial appraisal.[8]

Judge Dennis Jacobs dissented, primarily taking issue with the majority's reasoning on reliance. Judge Jacobs stressed that the fraud-on-the-market theory presumes reliance when an investment decision is made to purchase or sell a security at a market price tainted by fraud. Here, however, there was no indication of any investment decision—Monk simply held onto his shares, which, upon consummation of the merger, were canceled in exchange for $7.10 per ADS. Judge Jacobs pointed out that Monk did not allege that he even read the proxy statements or voted at the shareholder meeting.[9] In Judge Jacobs' view, the fraud-on-the-market presumption was not available on these facts, as there was no plausible connection between Shanda's market price and "an investor's trading decision."[10] Judge Jacobs also expressed concern that the majority's decision would erode state law appraisal rights, effectively giving investors a second bite at the appraisal apple under Section 10(b).[11]

Implications

In re Shanda is arguably a significant deviation from traditional tenets of Section 10(b) securities fraud jurisprudence. Since the 1975 Supreme Court decision in *Blue Chip Stamps*, a requirement for any private Section 10(b) securities fraud claim has been showing an actual purchase or sale premised on the defendant's allegedly false or misleading statement.[12] It is widely recognized that plaintiffs do not satisfy the purchase-or-sale requirement if they simply decide "not to purchase or sell stock as a result of the misrepresentation."[13] Rather, "one must demonstrate that the alleged fraud and the securities transaction 'coincide.'"[14]

The fraud-on-the-market presumption presumes that a stock's *market price* reflects all available information.[15] Consistent with *Blue Chip Stamps*, courts typically have applied the presumption where investors actually purchased or sold securities at the market price.[16] The situation in *In re Shanda* is quite different: Monk did not engage in a market price transaction, instead holding his ADS until they were canceled in the merger. In other words, even if Monk's tendering of his ADS technically qualifies as a "sale" under the securities laws,[17] it was not a sale at a "market price."

The key to the majority opinion is its premise that the market price still matters in this scenario. In the majority's view, although investors like Monk ultimately receive only the agreed merger price, to reach that point, they must first decide (1) not to sell to the market and (2) not to seek appraisal. Shanda's market price—allegedly deflated by misrepresentations—was an essential reference point for that decision.[18] The arguable flaw in this reasoning, highlighted in Judge Jacobs' dissent, is that the decision not to seek appraisal is an entirely "hypothetical" transaction, effectively allowing a Section 10(b) claim to proceed based on a decision to "hold" a security contrary to *Blue Chip Stamps*. [19]

At bottom, *In re Shanda* could significantly expand the Section 10(b) cause of action in the Second Circuit, allowing investors who tender shares in a freeze-out merger to assert claims, absent any allegation that investors even considered defendants' alleged misleading statements. Nevertheless, the decision's fate is by no means certain, given the Supreme Court's admonition against expansion of a "narrow" Section 10(b) cause of action that Congress did not expressly authorize. [20] *In re Shanda*'s survival even within the Second Circuit is not guaranteed, as Shanda filed its petition for rehearing *en banc* on March 19, 2025.[21] In all events, *In re Shanda* will shape the Section 10(b) cause of action in the Second Circuit, and potentially beyond.

[1] *In re Shanda Games Limited Sec. Litig.*, No. 1:18-cv-02463-ALC (S.D.N.Y. Sept. 30, 2019), ECF No. 57, at 14.

[2] *In re Shanda Games Limited Sec. Litig.*, No. 1:18-CV-2463-ALC, 2022 WL 992794, at *4 (S.D.N.Y. Mar. 31, 2022) (citing *Eric P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 811 (2011) (quoting *Basic Inc. v. Levinson*, 485 U.S. 224, 246 (1988)).

[3] *See id.* at *5.

[4] *See id.* at *6.

[5] *In re Shanda Games Limited Sec. Litig.*, 128 F.4th at 55. On appeal, Shanda did not dispute the efficiency of the market for Monk's ADS.

[6] *See id.* (underscoring that Monk retained the choice whether to permit his shares to be sold in the merger or to dissent and exercise his appraisal rights, even though his decision to dissent would not have blocked the merger).

[7] *Id.* at 57 (citing *Wilson v. Great American Indus., Inc.*, 979 F.2d 924, 931, 931 (2d Cir. 1992)).

[8] *See id.* (stating that Monk sufficiently alleged that "he suffered an economic loss when he accepted the tender price due to the misleading statements in the Proxies instead of receiving a higher value" in an appraisal suit).

[9] *See id.* at 63.

[10] *Id.* at 67.

[11] *See id.* at 70 ("I worry that (at least in the freeze-out merger context) minority shareholders who fail to exercise their individual right to appraisal under state law in the first instance will now have a second-chance claim via a class action under the federal securities law.").

[12] *See*, *e.g.*, *Sarafianos v. Shandong Tada Auto-Parking Co.*, Ltd., No. 13-cv-3895 (SAS), 2014 WL 7238339, at *4 (S.D.N.Y. Dec. 19, 2014) ("One reason the conduct alleged in the Complaint is not actionable under section 10(b) is that the alleged fraud does not relate to an investment decision made by Shandong."); *Chemical Bank v. Arthur Andersen & Co.*, 726 F.2d 930, 943 (2d Cir. 1984) (stating that "[t]he purpose of [Section] 10(b) and Rule 10b-5 is to protect persons who are deceived in securities transactions—to make sure that buyers of securities get what they think they are getting and that sellers of securities are not tricked into parting with something for a price known to the buyer to be inadequate or for a consideration known to the buyer not to be what it purports to be").

[13] *See*, *e.g.*, *In re Turquoise Hill Resources Ltd. Sec. Litig.*, 625 F. Supp. 3d 164, 196-97 (S.D.N.Y. Sept. 2, 2022) (discussing the purchase or sale requirement as articulated in *Blue Chip Stamps*); *see also Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71, 80 (2006) (noting that the Supreme Court in *Blue Chip Stamps* decided to strictly limit the private remedy under Rule 10b-5 to "plaintiffs who were themselves purchasers or sellers," in part due to policy considerations).

[14] *Schwartz v. Sensei, LLC*, No. 17-CV-04124 (SN), 2020 WL 5817010, at *5 (S.D.N.Y. Sept. 30, 2020) (citing *S.E.C. v. Zandford*, 535 U.S. 813, 823-25 (2002)).

[15] *In re Shanda Games Limited Sec. Litig.*, No. 1:18-CV-2463-ALC, 2022 WL 992794, at *4 (S.D.N.Y. Mar. 31, 2022) (citing *Eric P. John Fund, Inc. v. Halliburton Co.*, 563 U.S. 804, 811 (2011) (quoting *Basic Inc. v. Levinson*, 485 U.S. 224, 246 (1988)).

[16] *See Basic, Inc.*, 485 U.S. at 246-47 ("Because most publicly available information is reflected in market price, an investor's reliance on any public material misrepresentations, therefore, may be presumed for purposes of a Rule 10b–5 action.").

[17] *See Madison Consultants v. Fed. Deposit Ins. Corp.*, 710 F.2d 57, 61 (2d Cir. 1983) ("This Circuit has repeatedly held . . . that an owner of securities who is forced to sell them against his will has standing as a 'seller' for purposes of Rule 10b-5.").

[18] *See In re Shanda Games Limited Sec. Litig.*, 128 F.4th at 55.

[19] *Id.* at 68. Plaintiff did not argue that it had statutory standing under the "forced sale" doctrine as laid out in *Vine v. Beneficial Finance Co.*, 374 F.2d 627 (2d Cir. 1967) (providing a limited exception to the purchase or seller requirement and is only applicable when the plaintiff's investment position has been fundamentally altered by a forced sale). In any event, the forced sale doctrine—assuming that it is still viable after *Blue Chip Stamps*, which is an open question—would be inapposite here because, like Shandong in *Sarafianos v. Shandong Tada Auto-Parking Co., Ltd.*, Monk cannot allege that his investment position had been "fundamentally altered by an alleged forced sale." *See Sarafianos*, 2014 WL 7238339, at *4.

[20] *Janus Cap. Grp. v. First Derivative Traders*, 564 U.S. 135, 142 (2011) (internal quotations and citations omitted).

[21] *In re Shanda Games Limited Sec. Litig.*, Case No. 22-3076 (2d Cir. Feb. 12, 2025), Dkt. No. 115.

Delaware Court of Chancery Permits Reliance on News Articles and Information Post-Dating Books and Records Demand


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On January 29, 2025, in *State of Rhode Island Office of the General Treasurer v. Paramount Global* (the "Decision"),[1] the Delaware Court of Chancery issued a post-trial opinion, broadening the types of sources a stockholder may rely on to establish a proper purpose in connection with a books and records request under Delaware General Corporation Law Section 220. Paramount Global ("Paramount" or the "Company") had received a Section 220 demand from a Rhode Island pension fund (the "Stockholder") seeking documents to investigate potential corporate wrongdoing. Notably, finding in favor of the Stockholder, the Court concluded that (1) information post-dating a books and records demand may, in some circumstances, be utilized to support a credible evidentiary basis to suspect wrongdoing, and (2) news articles that use anonymous sources—like other materials potentially supporting a credible evidentiary basis—do not, *per se*, lack indicia of reliability and should be assessed on a case-by-case basis.

Background

National Amusements, Inc. ("NAI") controlled Paramount through its ownership of a majority of the Company's Class A stock. Shari Redstone controls NAI and serves as its CEO and Chairwoman. Redstone created Paramount in 2019 by way of a merger between two firms NAI controlled. However, Paramount failed to meet expectations, and at the end of 2023, Redstone began to explore a sale of NAI. On January 10, 2024, the *New York Post* reported that Redstone had sent non-disclosure agreements to private equity firms and was asking for as much as a 50% premium over market value. A *Wall Street Journal* article that same month reported that Skydance Media ("Skydance") was interested in purchasing NAI and expected to be able to pay more than a private equity firm due to anticipated synergies. In particular, citing sources familiar with the matter, the *Wall Street Journal* reported that Skydance's CEO, David Ellison, had proposed an all-cash bid, which would have been partially financed by Skydance investors (the "Skydance Deal").

Other bidders soon entered the scene. Media entrepreneur Byron Allen reportedly submitted a $14.3 million bid, offering a premium for Redstone's Class A voting stocks, but a *New York Post* piece noted that neither Paramount nor NAI had shown a genuine interest in striking a deal with Allen. On March 20, 2024, a *Wall Street Journal* article reported that Apollo Global Management ("Apollo") offered $11 billion for one of the media and entertainment assets that Paramount owns: Paramount Pictures (the "Studio"). Apollo's offer for the Studio exceeded Paramount's market valuation. In April 2024, an article in *Variety* reported that Redstone had entered into exclusive discussions with Skydance about acquiring NAI's controlling stake in Paramount.

On April 5, 2024, the Stockholder served a demand for books and records (the "Section 220 Demand"), seeking to investigate whether Redstone and NAI usurped Paramount's corporate opportunities by "channeling potential buyers toward a purchase of NAI or its controlling stake rather than a transaction with [Paramount]."[2]

On the same day the Stockholder sent its Section 220 Demand, the *Wall Street Journal* reported that the Skydance Deal was going to be a two-step deal: (1)

Skydance would buy NAI for $2 billion in cash, and then (2) Paramount would buy Skydance in an all-stock transaction valued at approximately $5 billion. Step two would mandate approval from a Special Committee. Throughout April 2024, news agencies, often citing anonymous sources, reported that: four Paramount directors would resign, including three directors on the Special Committee[3]; at least one of the departing directors referenced concerns regarding the Skydance Deal; and many Paramount stockholders voiced concerns about possible breaches of fiduciary duty by Redstone.

On April 19, 2024, Paramount rejected the Section 220 Demand on the basis that it was overly broad and did not proffer a proper purpose. The Stockholder filed suit on April 30, 2024. Several days after the Stockholder filed suit, the *Wall Street Journal* reported that Apollo and Sony Picture submitted a joint offer letter to acquire Paramount. A month later, another *Wall Street Journal* article reported that Skydance sweetened its offer with respect to the non-voting stockholders in the form of a 26% premium for a certain amount of Paramount Class B stocks. Critically, this revision meant $300 million less for NAI. On June 12, 2024, the *Los Angeles Times* reported that Redstone had a change of heart about the Skydance Deal due to the lowered consideration for herself, along with Skydance's refusal to indemnify Redstone against stockholder suits. On July 7, 2024, Paramount formally announced that Skydance would buy NAI for $2.4 billion, followed by a second-step merger between Skydance and Paramount that valued Skydance at $4.75 billion. Under this new deal, the post-merger company would indemnify Redstone.

On July 24, 2024, Judge Selena E. Molina, a Court of Chancery magistrate judge, presided over a trial on the papers and recommended a ruling in Paramount's favor. In a bench ruling, Judge Molina concluded that the Stockholder had not established an adequate evidentiary basis to support a proper purpose for an investigation into possible corporate wrongdoing. The Stockholder took issue with Judge Molina's post-trial bench ruling.

The Court of Chancery's Decision

The ultimate decision, by Vice Chancellor J. Travis Laster, was closely watched by practitioners, given the recent spike in Section 220 Demands in response to persistent encouragement from Delaware courts to utilize Section 220 prior to filing a lawsuit.[4] At trial, a stockholder must "show, by a preponderance of the evidence, a credible basis from which the Court of Chancery can infer there is possible mismanagement that would warrant further investigation . . ."[5] Paramount contended that the Stockholder lacked a proper purpose because it did not pinpoint a viable form of wrongdoing and that, even assuming *arguendo* that it had, the Stockholder neglected to create an evidentiary record sufficient to establish a credible basis to suspect corporate wrongdoing.

With respect to whether the Stockholder shouldered what Vice Chancellor Laster called its conceptual burden to identify a viable form of wrongdoing, the Court said that "Redstone and NAI . . . steering bidders away from a Company-level transaction and toward an NAI-level transaction" could involve breaches of the duty of loyalty and, therefore, support a proper purpose.[6] The Court looked to Delaware Supreme Court precedent, which teaches that "an investigating stockholder is not required in all cases to establish that the wrongdoing under investigation is actionable."[7] This makes sense because the purpose of obtaining books and records is to permit a stockholder to evaluate whether to file suit and plead a more viable claim, mandating that a Section 220 Demand articulate a viable claim would "put the cart before the horse."[8] Because he was convinced the Section 220 Demand described a situation that could give rise to a breach of loyalty claim, Vice Chancellor Laster found in favor of the Stockholder on this point.

Vice Chancellor Laster next analyzed a stockholder's reliance on evidence about *post*-Section 220 Demand events to meet its evidentiary burden (an issue of first impression). The Court acknowledged that a stockholder should, as a general matter, be confined to the evidence identified in the Section 220 Demand itself and information the stockholder knew (or could have known) at the time of the demand. However, where a "material event occurs after the demand but before trial" and when the stockholder's reliance on those events does not prejudice the corporation, an exception may be appropriate.[9] The Court explained that there is a difference between events post-dating a demand and information available to a stockholder pre-Demand that the stockholder neglects to include. Here, it was appropriate to permit the Stockholder to rely on post-Section 220 Demand news articles. Although it did not establish a bright line rule, the Court stated it would consider all of the post-Section 220 Demand evidence submitted,[10] given the Stockholder's pre-trial disclosure of news articles discussing material events that unfolded post-Section 220 Demand and the fact that the post-demand evidence relates to the Company's own conduct ("[a] party should not be surprised by evidence about its own acts, nor should the introduction of the evidence be prejudicial[]").[11]

As to the reliability of the news articles that the Stockholder introduced, the Court rejected Paramount's arguments that they were unreliable hearsay and that articles quoting or paraphrasing confidential sources are unreliable absent facts to evaluate the sources' credibility. The Court noted that Delaware law permits a stockholder to rely on hearsay to supply a credible basis to suspect corporate wrongdoing, so long as the hearsay carries sufficient guarantees of trustworthiness. When news articles are involved, the articles must directly implicate the company in wrongdoing or suggest wrongdoing. Here, the Stockholder submitted 47 news articles, many of which were lengthy and detailed. The news articles came from reputable publications and none reflected any "indicia of unreliability[.]"[12] Thus, the Court concluded that the Stockholder could rely on the news articles to establish a credible basis to suspect corporate wrongdoing.

Finally, Vice Chancellor Laster concluded that the news articles' use of anonymous sources did not make them unpersuasive, placing particular weight on the facts that: (1) the reputable publications had demanding internal standards for fact-checking confidential sources; (2) news organizations place their reputations on the line when publishing pieces that rely on anonymous sources; and (3) the sources themselves were likely drawn from internal personnel or professional advisers of the Company. Accordingly, the Court held that the news articles were sufficiently reliable to be accorded weight when assessing whether the Stockholder had established a credible basis to suspect corporate wrongdoing in connection with the sale of NAI.

Implications

Vice Chancellor Laster's decision provides insight into the types of evidence a stockholder can use to establish a proper purpose in connection with a Section 220 Demand. Post-demand evidence may be permissible, including when the events relate to the theory of wrongdoing alleged in the demand and also pre-date trial. In addition, hearsay evidence, including news articles, is allowed provided it meets Delaware's standard of trustworthiness. Nor are news articles that use anonymous sources automatically excluded, especially when the articles appear in reputable publications with rigorous sourcing procedures.

Nevertheless, the Decision's fate is not certain, given that, on March 24, 2025, the Court granted Paramount's application for certification of two aspects of the Decision for interlocutory appeal.[13] While of the view that the application mischaracterized the Decision and made "dubious predictions about its dire consequences," Vice Chancellor Laster felt that the Delaware Supreme Court's insights on these issues would be particularly useful and can be obtained efficiently.[14]

It will be interesting to see how the Delaware Supreme Court analyzes the Decision and whether it blesses Vice Chancellor Laster's views on the proper purpose and analysis.

[1] C.A. No. 2024-0457-SEM (Del. Ch. Jan. 29, 2025).

[2] *Id.* at 6.

[3] *See id.* at 7 ("On April 10, 2024, citing 'people familiar with the situation,' the *Wall Street Journal* reported that four Company directors would step down, including three directors serving on the Special Committee.").

[4] Stockholders in a Delaware corporation are statutorily entitled to inspect certain of the company's books and records. *See* 8 *Del. C.* Section 220(b).

[5] *Seinfeld*, 909 A.2d at 123. This showing "may ultimately fall well short of demonstrating that anything wrong occurred." *Khanna v. Covad Commc'ns Group, Inc.*, No. 20481-NC, 2004 WL 187274, at *6 n.25 (Del. 2006).

[6] C.A. No. 2024-0457-SEM, at 11 (Del. Ch. Jan. 29, 2025).

[7] *AmerisourceBergen Corp. v. Lebanon Cty. Empls.' Ret. Fund (AmerisourceBergen II)*, 243 A.3d 417, 421 (Del. 2020).

[8] C.A. No. 2024-0457-SEM, at 12 (Del. Ch. Jan. 29, 2025).

[9] *Id.* at 18.

[10] The post-Section 220 Demand evidence comprised 25 post-Section 220 Demand news articles, seven post-Section 220 Demand SEC disclosures by Paramount, and two litigation-related communications. *Id.* at 24. Of these, seven news articles and three SEC disclosures predate the Complaint; the rest predate the trial. *Id.* at 24-25. The post-Section 220 Demand news articles all report on Paramount's or Redstone's post-Section 220 Demand actions. *Id.* at 25.

[11] C.A. No. 2024-0457-SEM, at 21 (Del. Ch. Jan. 29, 2025). The Court also relied on the language and structure of Section 220 to conclude that a court can consider post-Section 220 Demand evidence under certain circumstances.

[12] *Id.* at 32.

[13] *See State of Rhode Island Office of the General Treasurer v. Paramount Global*, C.A. No. 2024-0457-SEM (Del. Ch. Mar. 24, 2025). Paramount asked the Court of Chancery to certify two rulings: (1) the finding that the Stockholder properly relied in this case on articles that post-dated the Section 220 Demand or the filing of the Complaint and (2) the finding that the Stockholder properly relied on articles citing anonymous sources. *See id.* at 6.

[14] *Id.* at 3, 12, 16. In particular, Paramount argued that the Decision would "permit litigants to use [Section] 220 litigation to launch an inquisition into hypothetical-but-as-yet unsubstantiated corporate wrongdoing." *Id.* at 13. Paramount also contended that the Decision "invites stockholders to use the Section 220 demand process to keep corporate books and records open in perpetuity as long as some rumors about the corporation circulate in the news, even if alleged wrongdoing has not occurred." *Id.* The Court said both were "poor attempts at Chicken Little consequences," as "[b]oth ignore (i) a corporation's independent ability to bring closure to the Section 220 process and [(ii)] more potent incentives that drives how most stockholders proceed when seeking books and records." *Id.*