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Insights Into Corporate Governance, M&A and Securities Law

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Table of Contents:

Delaware Supreme Court Reins in Moelis – On Procedure, Not Policy

By **Lindsey Kister**
Counsel

On January 20, 2026, in an *en banc* ruling, the Delaware Supreme Court unanimously reversed and vacated the Court of Chancery's 2024 decision invalidating provisions of Moelis & Co.'s stockholder agreement. The Court expressly declined to address the merits of whether the challenged provisions violated Delaware's board-primacy principles, holding instead that any alleged statutory defects rendered those provisions voidable — not void — and that the plaintiff's claims were time-barred.

The Chancery Court's Decision

As discussed in our prior Quorum article analyzing the Court of Chancery's ruling, the underlying dispute arose from a stockholder challenge to provisions in a stockholder agreement entered into in connection with Moelis & Co.'s initial public offering in 2014. The plaintiff contested the validity of the stockholder agreement, which granted the company's founder, Ken Moelis, and other affiliated holders extensive consent and approval rights over a wide range of corporate actions, as well as rights affecting board and committee composition.

In a decision that drew significant attention from practitioners and market participants, the Court of Chancery held that several of those provisions were facially invalid and a challenge to them is not subject to equitable defenses. In its opinion, the trial court concluded that if the challenged provisions violate Section 141(a) of the Delaware General Corporation Law (the "DGCL"), then they are void, and equitable defenses, including laches, cannot validate void acts. The trial court reasoned that the challenged provisions impermissibly constrained the board of directors' authority to manage the business and affairs of the corporation and could not be enforced through a private stockholder agreement. That ruling raised immediate concerns regarding the validity of similar governance arrangements commonly used in controlled-company, founder-led, and private-equity-backed structures.

The Supreme Court's Decision

The Delaware Supreme Court reversed the Court of Chancery's ruling on threshold procedural grounds, without reaching the substantive governance issues adjudicated in the lower court's 131-page decision.

The Supreme Court first determined whether the challenged provisions were void and therefore immune from equitable defenses, or merely voidable and thus subject to such defenses. In untangling the distinction between void and voidable contracts, the Court explained that void acts are not ratifiable because the corporation lacks the legal power to accomplish them, whereas voidable acts are ratifiable because the corporation can lawfully accomplish them if it does so in the appropriate manner. The Court reasoned that even assuming a conflict with statutory board-authority principles, the challenged provisions were at most voidable because similar governance arrangements could have been implemented through other lawful mechanisms, including charter-based structures. As a result, equitable defenses — including laches — were available.

In its laches analysis, the Supreme Court concluded that the claims accrued when the stockholder agreement was executed and publicly disclosed in 2014. Because the plaintiff waited nearly nine years to bring its facial challenge, the Court held that the claims were untimely and barred by laches, applying the analogous three-year statute of limitations. The Court disagreed with the trial court's application of the "continuing wrong" doctrine and rejected arguments that the continued operation of the agreement constituted an ongoing statutory violation sufficient to delay accrual.

Having resolved the case on these grounds, the Supreme Court expressly declined to address, and offered no opinion as to whether the challenged provisions violated Section 141(a) of the DGCL or otherwise impermissibly restricted the board's authority.

The Court also vacated the Court of Chancery's $6 million award of attorneys' fees and expenses to the plaintiff in connection with its earlier ruling.

Legislative and Market Context

The Supreme Court's decision comes against the backdrop of significant legislative developments following the Court of Chancery's 2024 ruling. In response to concerns raised by that decision, the Delaware General Assembly swiftly adopted Section 122(18) of the DGCL to expressly authorize certain governance arrangements implemented through stockholder agreements.

While the DGCL amendments were not retroactive, the legislative action mitigated the practical effects of the Court of Chancery's ruling and provided statutory cover for corporations and investors structuring governance rights going forward, reducing uncertainty and reinforcing Delaware's longstanding policy favoring private ordering in corporate governance.

Key Takeaways

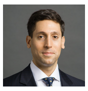
- The resolution of *Moelis* on timeliness grounds underscores that delay can be outcome-determinative in challenges to entrenched governance structures.
- Provisions alleged to conflict with statutory governance principles may be voidable rather than void, opening the door to laches and other equitable defenses.
- By deciding the case on procedural grounds rather than opining on whether the challenged stockholder-agreement provisions violated Delaware's board-primacy doctrine, the Court left that substantive question unresolved as a matter of common law.
- DGCL amendments subsequent to the Chancery Court's decision provide additional certainty for the use of stockholder agreements to allocate governance rights, even as common law limits continue to evolve.

Conclusion

The Delaware Supreme Court's unanimous reversal in *Moelis* reins in the reach of the Court of Chancery's earlier decision without endorsing or rejecting its substantive governance analysis. By resolving the case on procedural grounds, the Court avoided a broad pronouncement on the limits of private ordering under Section 141(a), while reinforcing the continued vitality of equitable defenses in corporate litigation. For practitioners, *Moelis* serves as a reminder that timing can be outcome-determinative — and that statutory and contractual governance structures must be evaluated through both doctrinal and procedural lenses.

Delaware Supreme Court Rejects Total Rescission of Musk Pay


By **Alec Cinque**
Law Clerk | Corporate


By **Peter Bariso**
Partner | Corporate

On December 19, 2025, the Delaware Supreme Court overturned the rescission of Elon Musk's 2018 Tesla compensation grant and instead awarded nominal damages and substantially reduced attorneys' fees. The case stemmed from a stockholder challenge to performance based equity awards approved by both the Tesla board of directors and stockholders that granted Musk stock options upon achieving certain aspirational stock price and operational targets. The derivative lawsuit alleged breaches of fiduciary duty, unjust enrichment and waste; specifically that Musk, acting as a controlling stockholder, compelled the board of directors to approve excessive compensation.

After a trial in 2022, the Court of Chancery concluded that Musk was a controlling stockholder despite holding only 21.9% of the Tesla voting power, in part because Musk was found to have exercised "transaction-specific control over the 2018 Grant" through Musk's "considerable power in the boardroom by virtue of his high-status roles and managerial supremacy." Applying the entire fairness standard, the Court of Chancery concluded that Tesla's directors failed to prove that the awards were fair to Tesla and its stockholders and ordered rescission of the compensation grant. The Court of Chancery also found Tesla's disclosures to its stockholders misleading. Following this, Tesla revised disclosures and obtained a second stockholder vote ratifying the original award, together with approval to reincorporate Tesla in Texas. Tesla then filed a motion seeking reinstatement of the grant. The Chancery Court did not alter its original judgment, which ordered rescission of the grant and $345 million in attorney's fees, in part because the court found the proxy statement for the subsequent stockholder proposal to be materially misleading.

On appeal the Delaware Supreme Court addressed only the remedy and declined to evaluate liability or Musk's status as a controlling stockholder. The Court held that total rescission was inequitable because all parties must be restored to the *status quo ante*. Since Musk had already fully performed under the 2018 compensation grant over several years, the Court of Chancery's decision would have left him uncompensated for these efforts, despite the fact that per the Delaware Supreme Court, equitable rescission is a viable remedy only if "the court can restore all of the challenged transaction's parties to the *status quo ante* (*i.e.*, the position they occupied before the transaction)."

The Delaware Supreme Court also found that the Court of Chancery erred in placing burden of proof on the defendants, stating that it was the plaintiff's burden to prove whether equitable rescission was an appropriate remedy and whether the parties could be placed in the same position, especially given that rescission was the only remedy sought by the plaintiffs.

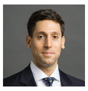
The Court also determined that Musk's existing equity holdings could not restore him to the *status quo ante* because the stock, and the increase in its value during his tenure, was not consideration for the services under the 2018 compensation plan. The Court awarded one dollar in nominal damages and recalculated attorneys' fees based on *quantum meruit*, decreasing the fee from $345 million to approximately $54.5 million.

The decision underscores the limits of rescission as a remedy in executive compensation disputes where performance has already occurred and cannot be unwound. It also signals continued scrutiny of large attorneys' fee awards.

The decision also leaves unresolved broader questions about controlling stockholders and fiduciary liability in similar cases. Notably, the decision did not address Musk's status as a controlling stockholder. In addition, the Court declined to comment on the Tesla board's process in approving Musk's equity awards, the adequacy of disclosure to stockholders or whether approval by Tesla's stockholders was fully informed. Similarly, the Delaware Supreme Court decision did not weigh in on the adequacy of the second Tesla stockholder vote seeking to ratify the original award.

Words and Actions – SEC Chairs' Role in Public Disclosure Reform


By **Philip Ibarra**
Law Clerk | Corporate


By **Peter Bariso**
Partner | Corporate

In a recent statement issued by the SEC on January 16, 2026, Chairman Atkins discussed his views on SEC disclosure reform. During the John L. Weinberg Center for Corporate Governance's 25th Anniversary Gala, back on October 9, 2025 Paul S. Atkins, Chair of the U.S. Securities and Exchange Commission (SEC), delivered a speech identifying three pillars through which he intends to make becoming a public company, once again, "an attractive proposition," citing the decline in exchange-listed companies over the years. The first of Atkins' three pillars is to "simplify and scale the SEC's disclosure requirements to reduce the costs of preparing SEC filings and, at the same time, make them more comprehensible." Although Atkins did not further address this first pillar during the remainder of his speech, instead focusing on his second and third pillars of de-politicizing shareholder meetings and reforming the litigation landscape for securities lawsuits, the subsequent statement issued on January 16 highlights goals for reforming SEC disclosure.

In Atkins' recent statement on reforming Regulation S-K, which outlines disclosure requirements for qualitative, non-financial statement descriptors of a registrant's business, he states that he has instructed the Division of Corporation Finance to engage in a comprehensive review of present disclosure requirements. Atkins also encouraged the public to provide comments on how Regulation S-K could be revised to better focus on "eliciting disclosure of material information and avoid compelling the disclosure of immaterial information." Although simplifying disclosure regulations is far from a unique agenda item honed in on by past SEC Chairs, Atkins' most recent push is notable for its breadth, and it could prove consequential for both filers and shareholders alike.

In his statement, Atkins mentioned that disclosure requirements under Regulation S-K have expanded greatly, clouding investors' ability to make informed investment or voting decisions and arguably "burying shareholders in an avalanche of immaterial information," which does not serve the goals of protecting investors or facilitating capital formation.

As noted, disclosure reform is not a novel concept. In 2012, the Jumpstart Our Business Startups (JOBS) Act significantly relaxed disclosure requirements for emerging growth companies. During a hearing before the Oversight Committee of the House of Representatives, then SEC Chair Mary L. Shapiro admitted that she was hesitant about potentially weakening these disclosure requirements, although she implemented them when the JOBS Act passed. It is worth noting that Shapiro announced a new process for SEC regulatory reform (which Atkins is currently using) through which public comment can be solicited *before* any SEC rules or amendments are proposed. SEC Chair Mary Jo White, Shapiro's successor, spoke at length about the issues of over-disclosure that burden shareholders with more information than necessary to inform their investment and voting decisions. Her actions mirrored her words, and in 2016 the SEC distributed a concept release (using Shapiro's new process) seeking public comment on the modernization of disclosure requirements in Regulation S-K. The next SEC Chair, Jay Clayton, continued this theme in repeatedly emphasizing "materiality" as it relates to the information that public companies choose to disclose to investors. In 2020, the SEC adopted amendments to Regulation S-K aimed to make filings more digestible and discouraged repetition and disclosure of information that is not material, shifting to a "principles-based" disclosure regime.

This latest push by Atkins follows his previous efforts to reform certain aspects of disclosure reform. In May 2025, shortly after Atkins assumed the role of SEC Chair, the SEC took comments on executive compensation disclosure requirements under Item 402 of Regulation S-K. In his January 16th statement, Atkins reported that the SEC received over 70 unique comment letters, and the staff is in the process of evaluating the letters and preparing recommendations for revisions to Item 402. Now, Atkins is seeking public comment on Regulation S-K in its entirety to facilitate a larger overhaul in the disclosure regime that "should enable a reasonable investor to separate the wheat from the chaff when reviewing periodic reports and proxy statements."

While it is too early to predict the expected changes to disclosure requirements under Regulation S-K going forward, if commenters and the SEC follow a similar focus to efforts so far on proposals to update Item 402, materiality may be an echoing theme. However, any potential revisions to Regulation S-K should not be analyzed in isolation. Reducing disclosure burdens is only one of three pillars in Atkins' push to "Make IPOs Great Again." Taking again from his January 16th speech, Atkins' second pillar aims to "de-politicize shareholder meetings and return their focus to voting on director elections and significant corporate matters." This pillar could be seen as a rebuke of former SEC Chair Gary Gensler's push for greater climate disclosures. Atkins' third pillar is to "reform the litigation landscape for securities lawsuits to eliminate frivolous complaints, while maintaining an avenue for shareholders to continue to bring meritorious claims." As previously discussed in Quorum, the SEC has already issued a policy statement potentially paving the way for the adoption of mandatory arbitration by issuers.

Looking at the recent agenda to explore reformation of Regulation S-K, it remains to be seen if the ultimate changes hit the right mark. If the right balance is achieved, disclosure could become more targeted and concise, allowing investors to digest and assess information important to make informed investment and voting decisions. However, if disclosure reduction goes too far, cutting material information from filings, it could stymie investors' ability to cohesively understand the business and affairs of the company. Notably, before her recent departure as a Commissioner of the SEC, Caroline Crenshaw expressed a belief that the recent reform efforts were "a race to the bottom."

Nasdaq Proposes Near-24-Hour Trading


By **Christal McCamy**
Associate | Corporate


By **William Mills**
Partner | Corporate

On December 15, 2025, the Nasdaq Stock Market LLC (Nasdaq) filed a proposal with the Securities and Exchange Commission (SEC) to amend the exchange's rules to allow equity securities and exchange traded products (ETPs) to trade 23 hours a day, five days a week, as early as late-2026.

Overview

Under Nasdaq's existing trading schedule, equity trading occurs during three sessions each weekday: pre-market (4:00 a.m. to 9:30 a.m. Eastern Time (ET)); regular market (9:30 a.m. to 4:00 p.m. ET); and post-market (4:00 p.m. to 8:00 p.m. ET). Under the proposal:

- Nasdaq would operate two equity trading sessions each weekday: a day session (4:00 a.m. to 8:00 p.m. ET) and a night session (9:00 p.m. to 4:00 a.m. ET).
- The one-hour pause from 8:00 p.m. ET to 9:00 p.m. ET between trading sessions would be reserved for systems maintenance, processing corporate actions (*g*., stock splits and dividends) and trade clearing.
- Each trading week will begin Sunday at 9:00 p.m. ET and conclude Friday at 8:00 p.m. ET, and any trades executed between 9:00 p.m. and midnight during the night session would be counted toward the following trading day.

According to Nasdaq, this proposal is a response to growing global demand for access to U.S. equity trading markets outside of traditional trading hours. Nasdaq's rule filing states that investors, particularly those based in Asia and Europe, increasingly seek to trade U.S. stocks and ETPs during local business hours. Chuck Mack, Nasdaq' Senior Vice President of North American Markets, previously stated that expanded trading hours would allow global investors access "on their own terms . . . in their own time zones." Other Nasdaq representatives have characterized the proposal as a competitive measure, arguing that it would better align U.S. markets with global trading behaviors and alternative trading platforms that already offer extended or continuous access.

Nasdaq's proposal is part of a broader industry trend in the U.S. trading market, in response to investor demand, toward extended trading hours. In 2024, the SEC approved registration of a new exchange, 24X National Exchange, designed to operate nearly 24 hours a day, though this exchange is not yet operational. Most notably, earlier in 2025, the New York Stock Exchange (NYSE) received preliminary SEC approval for a 22-hour trading day, five days a week, for U.S. equities and ETPs. The SEC's approval was conditioned on expanded data feed availability and other infrastructure conditions that would likely apply to Nasdaq as well. To facilitate information access, the Securities Information Processors (SIPs), which consolidate and disseminate U.S. market price data across exchanges, recently filed plans with the SEC to extend their operational hours to supply continuous pricing information. Nasdaq has acknowledged that details surrounding market protections, corporate actions and trading halts will require further coordination within the industry as part of the proposal's implementation.

Support

Proponents of 24-hour trading argue that extending equity trading hours would modernize U.S. markets and better reflect the increasingly global and technology-driven nature of investing. As noted above, a principal justification offered by

Nasdaq is that investor participation is no longer confined to U.S. time zones. Global institutional and retail investors, particularly in Europe and Asia, often seek access to U.S. securities during their own business hours, rather than during overnight or early-morning windows. Extended trading hours could therefore enhance accessibility and participation without requiring investors to rely on limited pre-market or post-market sessions.

Proponents also contend that nearly-continuous trading may improve price discovery by allowing markets to respond more promptly to international news events, economic data releases, and geopolitical developments that occur outside traditional market hours. Under the current framework, material news released overnight can result in sharp price movements at the market open, and supporters argue that a longer trading window could allow prices to adjust in real time and more gradually as information becomes available.

Opposition

Critics of near-24-hour trading have raised concerns that extended hours could negatively affect market quality, particularly during overnight sessions when participation is expected to be significantly lower. Historically, trading outside regular market hours has been characterized by thinner liquidity, wider bid-ask spreads, and greater price volatility. Opponents argue that expanding these periods could amplify such conditions, potentially disadvantaging investors who execute trades when fewer counterparties are active.

Some analysts have also expressed concern that continuous trading may contribute to the “gamification” of equity markets. They argue that prolonged availability could encourage speculative or impulsive trading behavior, particularly among retail investors, while offering limited incremental benefit to long-term capital formation.

Potential Market Impact

If approved and implemented, Nasdaq’s proposal could have wide-ranging implications for issuers, intermediaries, and investors. Market participants may need to adjust risk management systems, staffing models, and surveillance practices to accommodate longer trading days. Clearing and settlement processes would also need to operate reliably across extended hours to avoid introducing systemic risk.

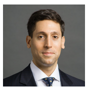
Issuers could face new considerations around corporate disclosures and investor communications. Earnings releases, guidance updates, and other material announcements are often timed to avoid disrupting regular trading. A near-continuous market could complicate these practices and increase the likelihood of price movements occurring in relatively illiquid conditions, or result in more frequent trading halts.

For investors, extended hours may increase flexibility but also heighten execution risks. Market participants may need to rely more heavily on limit orders and exercise greater caution when trading during overnight sessions, when price movements may be less representative of broader market consensus.

Nasdaq’s proposal for near-24-hour trading is part of a broader discussion of how U.S. equity markets operate in an increasingly global and digital financial ecosystem. As the SEC reviews the proposal and related infrastructure changes, including expanded data feed availability, the debate underscores the tension between innovation and market stability.

President Trump Issues Executive Order Focused on Proxy Advisors


By **Alec Cinque**
Law Clerk | Corporate


By **Peter Bariso**
Partner | Corporate

On December 11, 2025, President Donald J. Trump issued an executive order directing certain government agencies and departments to review all rules, regulations, and other publications relating to proxy advisors, specifically naming Institutional Shareholder Services Inc. (ISS) and Glass, Lewis & Co., LLC (Glass Lewis), and focusing on each entity's foreign ownership. The executive order highlights concerns with the "enormous influence over corporate governance matters" held by ISS and Glass Lewis which, according to the order, control more than 90% of the proxy advisor market. The purpose of the order is to "restore public confidence in the proxy advisor industry" and promote accountability, given ISS and Glass Lewis advocate for what the order refers to as "radical politically-motivated agendas – like 'diversity, equity, and inclusion' and 'environmental, social, and governance' – even though investor returns should be the only priority."

The executive order further directs the Chairman of the Securities and Exchange Commission (SEC) to consider revising rules, regulations and guidance that are inconsistent with the order, "especially to the extent they implicate" DEI and ESG policies and instructs the Chairman to:

- enforce anti-fraud provisions for any material misstatements or omissions in a proxy advisor's voting recommendations;
- determine if proxy advisors should be required to register as Registered Investment Advisers under the Investment Advisers Act of 1940;
- consider requiring increased transparency on proxy advisor recommendations, methodology and conflicts of interest;
- evaluate if a proxy advisor serves as a vehicle for investment advisers to coordinate their voting decisions, and if this could serve as the basis for a "group" for purposes of sections 13(d) and 13(g) of the Securities Exchange Act of 1934; and
- examine whether the reliance by investment advisers on the advice of proxy advisors on "non-pecuniary factors" such as DEI and ESG is inconsistent with the fiduciary duties of such investment advisers.

Aside from the SEC, the executive order also directs the Chairman of the Federal Trade Commission (FTC), together with the Attorney General, to review ongoing state antitrust investigations into proxy advisors to determine whether proxy advisers engage in unfair methods of competition, including by conspiring or colluding to diminish the value of consumer investments, failing to adequately disclose conflicts and/or providing misleading or inaccurate information. These mandates follow news of the FTC's investigation of ISS and Glass Lewis for engaging in unfair methods of competition through their guidance of shareholder votes, and litigation commenced in November by the State of Florida against ISS and Glass Lewis under state unfair practice and unfair competition statutes, for "enter[ing] into a per se illegal agreement by agreeing to enforce their controversial ideological mandates by way of threat — recommending votes against corporate board members who are not the right gender or do not fall in line and affirmatively voice support for Defendants' ideological agenda."

The order also directs the Secretary of Labor to revise regulations regarding fiduciary status of proxy advisors and others who advise managers of ERISA plans.

The order further instructs the Secretary of Labor to consider whether any proposed revisions "should include amendments to specify that any individual who has a relationship of trust and confidence with their client, including any proxy advisor, and who provides advice for a fee or other compensation, direct or indirect, with respect to the exercise of the rights appurtenant to shares held by ERISA plans, is an investment advice fiduciary under ERISA." If the Department of Labor (DOL) were to determine that proxy advisors are an investment advice fiduciary under ERISA, this would limit proxy advisors' ability to assess non-pecuniary factors in their advice.

Depending on the determinations of the SEC, FTC and DOL, the order could result in major ramifications for both investors and companies. As noted in the order, many investors vote in accordance with proxy advisor recommendations. With substantial curtailment on the ability of advisors to provide fulsome recommendations, companies may have less insight into expected results of stockholder proposals. While the order has no immediate effect on proxy advisor business, both ISS and Glass Lewis have already implemented changes. Glass Lewis announced that it will eliminate its benchmark proxy voting guidelines in 2027 and move to client specific voting frameworks aligned with individual investment philosophies and priorities. ISS recently announced that it intends to support increased flexibility for proposals related to diversity, political contributions, human rights and climate change, opting for a "case-by-case" approach in these areas.