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Failure to Satisfy Four Prongs of MFW Framework Dooms Pleading-Stage Dismissal of Claims Arising from Controlling Stockholder-Led Redemption of Minority Shares

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DELAWARE CORPORATE LAW BULLETIN

Failure to Satisfy Four Prongs of *MFW* Framework Dooms Pleading-Stage Dismissal of Claims Arising from Controlling Stockholder-Led Redemption of Minority Shares

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In denying defendants' motion to dismiss, Chancery Court cites potential coercive impacts of controlled board's failure to empower special committee to evaluate all "functiona[l] equivalent[s]" of negotiated redemption

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INTRODUCTION

Among the most heavily litigated commercial transactions in the Delaware Court of Chancery ("*Chancery Court*") are those involving controlling stockholders. Traditionally, Delaware courts applied the least forgiving standard of review—entire fairness—to transactions involving controlling stockholders because of the obvious conflicts posed by such transactions. When entire fairness is the operative standard of review, defendants (usually the controlling stockholder and members of the controlled corporation's board of directors) rarely can achieve pleading-stage dismissal. Beginning with *Kahn v. M & F Worldwide Corp.*, 88 A. 3d 635 (Del. 2014) ("*MFW*"), however, Delaware courts have applied the most lenient standard of review—business judgment—when the contested transaction is structured to satisfy a six-factor test ("*MFW Framework*") promulgated by the *MFW* Court:

> (i) [T]he controller conditions the procession of the transaction on the approval of both a Special Committee and a majority of the minority stockholders; (ii) the Special Committee is independent; (iii) the Special Committee is empowered to freely select its own advisors and to say no definitively; (iv) the Special Committee meets its duty of care in negotiating a fair price; (v) the vote of the minority is informed; and (vi) there is no coercion of the minority.

When the *MFW* Framework is satisfied, the Chancery Court ordinarily will grant defendants a pleading-stage motion to dismiss. *See* Robert S. Reder & Ashleigh C. Bennett, *Delaware Supreme Court Explores Application of MFW's "Ab Initio" Requirement in Controlling Stockholder-Related Litigation*, 72 VAND. L. REV. EN BANC 237 (2019).

As Vice Chancellor J. Travis Laster of the Chancery Court explained in *In re Dell Techs. Inc. Class V S'holders Litig.*, No. 2018-0816-JTL, 2020 WL 3096748 (Del. Ch. June 11, 2020) ("*Dell Technologies*"), to satisfy the *MFW* Framework, " 'the controller [must] irrevocably and publicly disable[ ] itself from using its control to dictate the outcome of the negotiations and the shareholder vote,' thereby allowing the conflicted transaction to 'acquire[ ] the shareholder-

protective characteristics of third-party, arm's-length mergers.' " In *Dell Technologies,* a corporation controlled by founder Michael Dell and his private equity partner purported to take advantage of the *MFW* Framework in effecting a negotiated redemption of a class of stock owned by minority stockholders. The Vice Chancellor, in a detailed opinion largely denying the defendants' motions to dismiss, determined that the plaintiffs adequately pleaded that the controlling stockholders and their board designees failed to satisfy the *MFW* Framework in several important respects:

- Because a functional equivalent to the negotiated redemption—a "[f]orced [c]onversion" authorized by the controlled corporation's charter—was excluded from the range of alternative transactions a special board committee was entitled to evaluate, the committee "was never fully empowered to say no" to the negotiated redemption.
- Rather than taking charge of the process, the committee sat by passively while the controlling stockholders negotiated improved economic terms with a group of minority stockholders, effectively "rubber stamp[ing]" the results of that negotiation.
- The controlled corporation's not-so-subtle threats to trigger the "[f]orced [c]onversion" if negotiations over the redemption failed had an impermissibly coercive impact on both the special board committee approval process and the minority class vote approving the negotiated redemption.
- The two members of the special board committee enjoyed long-standing social and business relationships with the controlling stockholders, casting doubt on their independence.
- The disclosure materials describing the negotiation process for the redemption contained material misstatements and omissions, calling into question whether the minority stockholders' vote approving the redemption was fully informed.

I. FACTUAL BACKGROUND

A. Dell Technologies Acquires a Majority Stake in VMware

In September 2016, Dell Technologies Inc. ("*Company*") purchased EMC Corporation, "a data-storage firm" ("*EMC*"). Among EMC's "most valuable assets" was "its ownership of 81.9% of the equity of VMware, Inc. [("*VMware*")], a publicly traded cloud-computing and virtualization company." The Company funded this $67 billion acquisition "using a combination of cash and newly issued shares of Class V common stock," established to track the performance of 65% of

EMC's stake in VMware ("*Class V Stock*"). By its terms, Class V Stock was convertible, at the Company's option ("*Forced Conversion*"), into shares of the Company's Class C common stock ("*Class C Stock*"), but only if the Company first listed the Class C Stock for public trading on a national securities exchange. The potential of a Forced Conversion created uncertainty as to the value of Class V Stock, causing it to trade at a 30% discount ("*Dell Discount*") "relative to the publicly traded shares of VMware."

After the acquisition, Michael Dell and Silver Lake Group LLC ("*Silver Lake*"), a private equity firm who previously had partnered with Mr. Dell to take the Company private in a leveraged buyout, collectively owned over 96% of the Company's voting power through super-voting Class A and Class B common stock, respectively. Company employees owned Class C Stock representing "less than 1% of the Company's voting power," while former EMC stockholders owned Class V Stock representing "less than 4%." The Company board of directors ("*Board*") included six directors: (i) Mr. Dell, who was entitled to "exercise seven board-level votes"; (ii) two designees of Silver Lake, who each "exercise[d] one-and-a-half board-level votes"; and (iii) three directors elected by the "holders of all of the shares of common stock voting together" "who each had one board-level vote." Mr. Dell controlled the election of these three directors.

Shortly after completing the acquisition of EMC, Mr. Dell and Silver Lake began to consider options for consolidating "the Company's ownership of VMware." In December 2017, they began exploring "a potential stock-for-stock transaction in which both VMware stockholders and the Class V stockholders would receive the same security." This transaction implied a valuation for the portion of the Company's business not tracked by the Class V Stock ("*Core Business*") of $35 to $48 billion, even though, "[c]ontemporaneously, the Board approved a valuation for purposes of granting equity awards to employees that valued the Core Business at $19.5 billion." About a month later, the Company took an apparent first step towards exercising the Forced Conversion by leaking "to *Bloomberg* that it was considering an initial public offering of the Class C stock," causing "the trading price of the Class V stock [to] plumme[t]."

At the end of January 2018, Mr. Dell and The Goldman Sachs Group, Inc. ("*Goldman Sachs*"), the Company's financial advisor, "presented the Board with three alternatives for consolidating the Company's ownership of VMware": (i) negotiate the acquisition of the minority stake in VMware not owned by the Company, (ii) negotiate with VMware for a redemption of the Class V Stock, or (iii) trigger a Forced Conversion. To satisfy the *MFW* Framework, the Board

established a two-person special committee ("*Special Committee*") "charged . . . with negotiating a redemption of the Class V shares . . . [conditioned] on both (i) committee approval, and (ii) approval from holders of a majority of the outstanding Class V shares." Notably, the Board did not grant the Special Committee "authority over a Forced Conversion."

B. Path to Committee-Authorized Redemption

The Company then initiated a "dual-track discussio[n]"—with VMware, on the one hand, and with the Special Committee, on the other—to negotiate a Class V Stock redemption. On March 12, Goldman Sachs delivered separate presentations, first to VMware's bankers and then to Evercore Group L.L.C. ("*Evercore*"), the Special Committee's financial advisor, "that valued the Core Business at $48–$52 billion." Within two weeks, Goldman Sachs learned, and subsequently advised Evercore, "that VMware thought the value of the Core Business was [only] $41.5 billion." Given this news, "the Special Committee decided to wait and see how" negotiations between the Company and VMware developed.

Those negotiations broke down in April due to " 'intractable valuation differences' over the values of both the Core Business and VMware." The Company promptly "refocused on acquiring the Class V shares, where the existence of the Conversion Right gave the Company relatively greater leverage over the Special Committee and the Class V stockholders." On April 27, Goldman Sachs "proposed that the Company redeem the Class V stock in exchange for shares of Class C stock" using a $50 billion valuation of the Core Business, "the same valuation that VMware had rejected." In relaying Goldman Sachs's proposal to the Special Committee, Evercore "noted that the structure was effectively the same as a Forced Conversion." The Special Committee did not respond to this proposal.

On May 17, the Company filed a Form 8-K with the Securities and Exchange Commission ("*SEC*") disclosing its consideration of an initial public offering ("*IPO*") of Class C Stock, a move likely to precipitate a Forced Conversion. Five days later, Goldman Sachs approached Evercore with three options for a Class V Stock redemption in exchange for Class C Stock, all "based on the $50 billion valuation of the Core Business." Later that month, Evercore presented Goldman Sachs's proposals to the Special Committee. At the same time, Evercore described a meeting with a group of "Class V stockholders, reporting that 'each stockholder expressed the view that a standalone IPO . . . would be the worst alternative for the Class V Stockholders

given the uncertainty of when the Company would convert the Class V Stock.' "

On June 1, Goldman Sachs " 'requested specific feedback' on its proposals 'in advance of the Company's upcoming earnings call," indicating that the Special Committee's response "could influence the Company's presentation . . . with respect to, among other things, whether the Company intended to pursue a possible IPO." At this point, the Special Committee retained an "outside industry consultant," DISCERN Analytics, Inc. ("*DISCERN*"), "to evaluate the Company's revised projections." DISCERN advised "that the Company's projections were 'reasonable and/or [a]chievable' " while reemphasizing "the threat of a Forced Conversion," leading the Special Committee and Goldman Sachs to present counteroffers. The Special Committee first offered a price based on a Core Business valuation of $42.5 billion and Goldman Sachs countered with a valuation of $50 billion. The Special Committee then countered with a valuation of $46 billion and Goldman Sachs again countered, this time with a valuation of $48.4 billion. When "[t]he Special Committee tried for a slight increase" after receipt of Goldman Sachs's second counteroffer, "the Company claimed that it had made its best and final offer." The Special Committee then accepted this offer ("*Committee-Sponsored Redemption*").

C. Stockholder Opposition Mounts

After the Company publicly announced the Committee-Sponsored Redemption on July 2, VMware's "publicly traded stock closed at $162.02." This implied a Company "windfall of $10 billion," based on the difference between the $162.02 per share closing price and the "agreed-upon consideration of $109 per Class V share" for the Committee-Sponsored Redemption. Advised by Evercore that "significant Class V Stockholders would ask for more value," the Special Committee elected to take no action to address this concern.

In late September, the Board met with Goldman Sachs to discuss both Class V Stockholders' concerns and the IPO alternative. Goldman Sachs reported that twelve "Key Investors" had reacted negatively to the redemption pricing, casting doubt on the likelihood of Class V Stockholder approval. The Special Committee members were present at this meeting, but "did not advocate on behalf of the Class V stockholders."

On October 3, a Company SEC filing confirmed a meeting "with certain investment banks to explore a potential initial public offering of its Class C Common Stock," again raising the Forced Conversion as a "potential contingency plan" in lieu of the Committee-Sponsored

Redemption. Two weeks later, in an open letter to other Class V Stockholders, investor Carl Icahn criticized both the Committee-Sponsored Redemption and the potential economics of a Forced Conversion. Again, the Special Committee took no action. This passivity continued even after the Special Committee learned that the Company "appeared to be open to further negotiations" to improve the terms of the deal.

Then, on November 6, Evercore informed the Special Committee of direct negotiations between the Company and "certain significant Class V Stockholders" ("*Stockholder Volunteers*") on improved terms. Two days later, Evercore informed the Special Committee that the deal terms needed to be improved because "none of the shareholders contacted indicated they will vote for the current proposal." Although the Special Committee then proposed an increase in the redemption price to $125 per share, the Company stood by a previously negotiated "agreement in principle with the Stockholder Volunteers on a transaction at $120 per share" ("*Stockholder-Negotiated Redemption*"). The agreement in principle valued the Core Business at $40.5 billion, "$9.5 billion less than the valuation . . . placed on the Core Business" during earlier negotiations with the Special Committee.

After "the Company informed the Special Committee about the Stockholder-Negotiated Redemption," the Special Committee met for an hour late in the evening of November 14 before approving the new redemption terms. Formal Board approval followed just "one minute later." Following dissemination to Class V Stockholders of proxy materials describing the Stockholder-Negotiated Redemption ("*Proxy Statement*"), on December 11, holders of 61% of outstanding shares of Class V Stock voted to approve the transaction. The redemption was completed just before year-end.

D. Litigation Ensues

Former holders of Class V Stock ("*Plaintiffs*") brought suit in Chancery Court challenging the Stockholder-Negotiated Redemption. Plaintiffs claimed in Count I that members of the Board breached their fiduciary duties in pursuing and approving the transaction. In Count II, Plaintiffs claimed that Mr. Dell and Silver Lake "breached their fiduciary duties as controlling stockholders." Mr. Dell, Silver Lake, and the directors (collectively, "*Defendants*") moved to dismiss, claiming that "the Stockholder-Negotiated Redemption complied with the requirements of *MFW* and is therefore subject to the irrebuttable version of the business judgment rule."

II. VICE CHANCELLOR LASTER'S ANALYSIS

Vice Chancellor Laster noted at the outset of his analysis that "[t]he main issue for purposes of the motions to dismiss is the applicable standard of review." To address this issue, the Vice Chancellor evaluated four of the "six necessary and sufficient conditions for obtaining *MFW* cleansing" under the *MFW* Framework. Although failure to satisfy any one prong would preclude pleading-stage dismissal, the Vice Chancellor determined that four of the six prongs were not satisfied. And because Defendants did "not contend that the complaint fails to state a claim when judged under [the entire fairness] standard," the Vice Chancellor rejected Defendants' motion to dismiss, permitting Plaintiffs "to proceed and conduct discovery."

A. Dual Protections

The *first prong* of the *MFW* Framework—"the controller conditions the procession of the transaction on the approval of both a Special Committee and a majority of the minority stockholders"—frequently is referred to as the "[D]ual [P]rotections." Vice Chancellor Laster found that Plaintiffs' "complaint supports a reasonable inference that the Company did not properly establish and respect" the Dual Protections in two respects.

1. Exclusion of Forced Conversion

By excluding the Forced Conversion—the "functiona[l] equivalent to a . . . Class V Transaction"—from the range of alternative transactions the Special Committee was entitled to evaluate, "the Special Committee was never fully empowered to say no." Thus, if the Special Committee rejected the negotiated redemption of the Class V Stock, the Board could simply turn to the Forced Conversion to eliminate the class. This lack of empowerment was highlighted by the Company's repeated "threaten[ing] both the Special Committee and the Company's stockholders with" the Forced Conversion.

Vice Chancellor Laster rejected Defendants' contention that the "Forced Conversion was an entirely different type of transaction than a negotiated redemption." While technically true, "what matters here[ ] is that they were alternative means of achieving the controller's end." While "the Company was not obligated to foreswear 'every hypothetical transaction,' " to satisfy *MFW* the Company was required to forego "any transaction that was *functionally equivalent* to a Potential Class V

Transaction without the support of the Special Committee or the approval of the Class V stockholders" (emphasis added).

2. Direct Negotiations with Stockholders

The Vice Chancellor also found that the Company "failed to respect the [Dual Protections] when it bypassed the Special Committee and negotiated directly with the Stockholder Volunteers." He reasserted the intent of the *MFW* Framework to ensure "independent, empowered negotiating agents to bargain for the best price and say no if the agents believe the deal is not advisable." After listing the many benefits of this structure, the Vice Chancellor declared that "[s]tockholder volunteers cannot replace the committee." Unlike the Special Committee, the Stockholder Volunteers were not subject to fiduciary duties, held potentially divergent interests from other Class V Stockholders, and were unable "to match the committee's ability to access the non-public information necessary to serve as an effective bargaining agent." Once the Board delegated to the Special Committee the "power and duty to protect the best interests of the minority stockholders," the Special Committee "was not at liberty to become a passive instrumentality" by deferring to Stockholder Volunteers.

When Defendants countered "that the Special Committee remained sufficiently involved in the negotiations," the Vice Chancellor responded that the Special Committee, although informed, failed to act in response to changing circumstances. In particular, the Vice Chancellor pointed to the Special Committee's single effort to reassert control of the negotiations when, in October 2018, "the Special Committee rouse[d] itself and propose[d] a transaction at $125 per share." Rather than responding,

> [t]he Company ignored the Special Committee, because by that time it had reached an agreement in principle with the Stockholder Volunteers at $120 per share. At that point, the Special Committee imitated a rubber stamp. Its members spent one hour reviewing the transaction in a late-night meeting and endorsed what the Stockholder Volunteers had accomplished.

The Vice Chancellor took pains to explain that he was not troubled that the Company raised "its offer after reaching agreement with" the Special Committee. Rather, any such improvement in the terms "must result from continued negotiations with the special committee, not a process that bypasses a now-passive committee in favor of direct negotiations with stockholders." While "arm's-length negotiations with the Stockholder Volunteers" may have "evidentiary benefit . . . [a]t a later stage of the case," Plaintiffs' allegations that the Special Committee became a "passive instrumentality," effectively

"abandon[ing] the field" to Stockholder Volunteers, "support[ed] a reasonable inference that *MFW* does not apply."

B. Coercion

Vice Chancellor Laster next turned to the *sixth prong* of the *MFW* Framework, requiring that there be "no coercion of the minority." The Vice Chancellor examined this prong in terms of whether "coercive conduct" by the Company "undermined the effectiveness of the Special Committee and the legitimacy of the Class V stockholder vote."

1. Five Strands of Coercion

In this connection, the Vice Chancellor identified "five strands of [Delaware] case law" that "involve different factual scenarios and approach the concept of coercion in different ways." Of these five strands, the Vice Chancellor concluded that three "offer guidance for evaluating the question of coercion in this case":

- "Coercion [b]y [a] [f]iduciary" raises the issue of "whether a fiduciary has taken action to coerce its own beneficiaries," an act of disloyalty that "violates the standard of conduct expected of fiduciaries." According to the Vice Chancellor, "[t]he operative test for this strand of coercion is whether the fiduciary has taken action which causes stockholders to act—[including] by voting . . . —for some reason other than the merits of the proposed transaction." These actions could include (i) creation of "a coercive environment" by offering an otherwise "problematic" alternative to a third-party proposal "that forced rational stockholders to accept [the fiduciary's] favored alternative" and (ii) situations where "fiduciaries can coerce stockholders by threatening to make their situation worse."
- "Coercion [u]nique to [c]leansing [v]otes" involves two distinct sub-strands, "situational coercion" and "structural coercion." Developed to monitor the "powerful cleansing effect of stockholder votes under *Corwin*," the presence of either strand means "that the stockholder vote does not have cleansing effect." *See Corwin v. KKR Fin. Holdings LLC*, 125 A.3d 304 (Del. 2015). For a discussion of the application of situational and structural coercion in the *Corwin* context, see (i) Robert S. Reder, *Delaware Court Refuses to Invoke Corwin to "Cleanse" Alleged Director Misconduct Despite Stockholder Vote Approving Merger*, 70 VAND. L. REV. EN BANC 199 (2017) and (ii) Robert S. Reder & Victoria L. Romvary, *Delaware Court Determines Corwin Not*

Available to "Cleanse" Alleged Director Misconduct Due to "Structurally Coercive" Stockholder Vote, 71 VAND. L. REV. EN BANC 131 (2018).

- "[S]ituational coercion" exists where "a status quo can be sufficiently unattractive to prevent a stockholder vote from operating as a clear endorsement of a[n alternative] transaction and therefore having cleansing effect."
- "Structural [c]oercion" exists where a vote is "structured so that considerations extraneous to the transaction likely influenced the stockholder-voters, so that [the court] cannot determine that the vote represents a stockholder decision that the challenged transaction is in the corporate interest."
- "Coercion [o]f [a] [c]ommittee" recognizes that, "[a]s with the stockholder vote, a controller's explicit or implicit threats can prevent a committee from fulfilling its function and hav[e] a concomitant effect on the standard of review." Thus, an otherwise "well informed" and "arm's-length" negotiation can be compromised by "a coercive environment that undermine[s] the Special Committee's ability to bargain effectively."

2. Coercion Negates *MFW* Protections

Against this backdrop, Vice Chancellor Laster found it "reasonably conceivable that the Company created a coercive situation by threatening a Forced Conversion." This environment "both undermined the Special Committee's ability to bargain effectively and the ability of the stockholders to vote down the deal." In so ruling, the Vice Chancellor recognized several reasonably conceivable "forms of coercion . . . in play," including

- the "steady drumbeat of actions by which the Company signaled its intent to exercise the [Forced] Conversion . . . in the absence of a negotiated redemption";
- the Special Committee's "mindful[ness] at all times of the Company's ability to implement a Forced Conversion";
- "the specter of a Forced Conversion caused the Class V stockholders to approve the Stockholder-Negotiated Redemption for reasons other than the merits of that transaction";
- given the Dell Discount that "Mr. Dell had created . . . through his prior acts," the Class V Stockholders faced situational coercion through "an impossible choice between an unappealing status quo and an alternative which, although unfair, was better than their existing situation";

- "by reserving the right to bypass the Special Committee and engage in a Forced Conversion, the Company created a coercive environment" under which it was reasonably inferable "that the Special Committee did not agree to the Committee-Sponsored Redemption because it was fair, but because it was better for the Company's stockholders than a Forced Conversion"; and
- because Class V Stockholders were presented with a vote on "a package deal in which the stockholders received a choice between accepting the transaction on offer, warts and all, or maintaining the [undesirable] status quo," the "stockholders could not ' "*easily protect themselves at the ballot box by simply voting no.*" ' "

3. Defendants' Counterarguments Rejected

Vice Chancellor Laster rejected three arguments raised by Defendants to counter these inferences of coercion:

- *First,* Defendants argued that the Forced Conversion could not have created a coercive environment because it "is written in the certificate of incorporation" of the Company. The Vice Chancellor countered with the oft-cited, long-recognized principle of Delaware common law that just because an action is technically lawful "does not obviate the need for equitable analysis."
- *Second,* Defendants argued that the Class V Stockholders were not coerced because "the Stockholder Volunteers were able to improve on the Committee-Sponsored Redemption." But as the Vice Chancellor explained: "The Stockholder Volunteers were able to improve on the Special Committee's flawed work, but that does not mean that they too were not coerced. The fact that they did a relatively better job than the Special Committee does not mean that the outcome they achieved was fair."
- *Third,* Defendants argued "that even if the Stockholder-Negotiated Redemption exploited the Class V stockholders, they could have voted it down and maintained the status quo." The Vice Chancellor reiterated that "what mattered for purposes of coercing . . . the Class V stockholders was the Company's repeated references to the possibility of exercising" the Forced Conversion. Considering that the "status quo for the Class V stockholders meant enduring the Dell Discount," the "stockholders had an incentive to vote in favor of an unfair redemption for reasons other than its merits, rendering the stockholder vote ineffective for purposes of *MFW*."

C. Independence of Special Committee

With reference to the *second prong* of the *MFW* Framework, Vice Chancellor Laster explored the independence of the Special Committee's two members. To adequately plead lack of independence, the Vice Chancellor instructed that Plaintiffs "must allege facts supporting a reasonable inference that a director is sufficiently loyal to, beholden to, or otherwise influenced by an interested party so as to undermine the director's ability to judge the matter on its merits." The Vice Chancellor found that Plaintiffs satisfied this pleading standard.

Specifically, the Vice Chancellor credited Plaintiffs' allegations that one member's "social connections" and "financial and economic relationships" with the Company's controlling stockholders "compromised his ability to engage in hard-nosed bargaining as a member of the Special Committee." With respect to the other member, allegations concerning (i) his role as a director of a Company subsidiary that was "commercially dependent on the Company and VMware," (ii) the fact that he "was negotiating against Goldman Sachs" as a member of the Special Committee while being represented by Goldman Sachs as director of the Company subsidiary, and (iii) his longtime relationship with "one of Mr. Dell's closest friends," considered together, "compromised his ability to negotiate vigorously and independently . . . as a member of the Special Committee."

D. Fully Informed Stockholder Vote

Finally, Vice Chancellor Laster addressed the *fifth prong* of the *MFW* Framework which requires that the Class V Stockholder vote approving the transaction be "fully informed." In this connection, the Vice Chancellor found that Plaintiffs' pleadings made it "reasonably conceivable that three categories of material information were either omitted or presented in a way that was materially misleading":

- *First*, a Proxy Statement supplement implying that "the Special Committee successfully advocated to increase the price of the redemption to $120 per share" was belied by the actual sequence of events: the Company negotiated the final $120 redemption price with the Stockholder Volunteers while ignoring the Special Committee's last-ditch attempt to secure a $125 per share redemption.
- *Second*, the Proxy Statement touted DISCERN's advisory work, despite DISCERN's alleged "lack of experience and murky history," while failing to disclose DISCERN's compensation arrangements or "a fair summary of [its] analysis."

- *Third*, the Proxy Statement failed to disclose that, in April 2018, Deloitte & Touche LLP had valued the Core Business "at between $29.3 billion and $35.2 billion," significantly below the valuation implied by the Stockholder-Negotiated Redemption.

CONCLUSION

Dell Technologies offers significant guidance to dealmakers and their legal counsel for structuring commercial transactions involving controlling stockholders. Vice Chancellor Laster's comprehensive opinion demonstrates that simply paying lip service to the "six necessary and sufficient conditions for obtaining *MFW* cleansing" under the *MFW* Framework will not guarantee pleading-stage dismissal of breach of fiduciary duty claims against controlling stockholders and target board members. To the contrary, to achieve *MFW* cleansing, care must be taken so that

- Special board committees are fully empowered to consider all aspects of a proposed transaction, including all "functiona[l] equivalent[s]" of the transaction in question.
- Direct controlling stockholder negotiations with select minority stockholders do not preclude or replace active efforts by a duly appointed special board committee to negotiate the best results possible for all minority stockholders.
- Controlling stockholders do not use their power over the corporate approval mechanics, either in terms of the special board committee process or the majority-of-the-minority stockholder vote, to "coerce" an outcome favorable to the controlling stockholder's interests. For instance, the controlling stockholder's threat to impose unfavorable consequences if its preferred course is not followed, or the giving of a false choice to committees and minority stockholders between two relatively unfavorable outcomes, will not afford business judgment protection under *MFW*.
- Special committee members are truly independent, with due consideration given to the potential impact on the independence of committee members of deep and long-standing social or business relationships with the controlling stockholder or its affiliates.
- Minority stockholders are fully informed as to all material matters impacting their vote in disclosures provided by the controlled corporation.