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Delaware Court of Chancery Holds that Minority Stockholders Did Not Waive Appraisal Rights in a Merger Where the Company Failed to Properly Exercise Drag-Along Rights

In *Halpin v. Riverstone National, Inc.*, a controlling stockholder caused the company to complete a merger, but did so without exercising drag-along rights that would have compelled the minority stockholders to vote in favor of the merger and thereby waive their statutory rights to judicial appraisal. After receiving notification of the merger, the minority stockholders filed an action for statutory appraisal of their shares, and, in response, the company sought an order requiring the minority stockholders to vote in favor of the merger so that the company could avail itself of the benefits of the drag-along rights. The Delaware Court of Chancery held that because the company failed to properly exercise its drag-along rights in advance of the merger, the minority stockholders were not required to vote in favor of the merger and thus could pursue their appraisal rights. For more, click [here](#).

Delaware Court of Chancery Holds that Fee-Shifting Bylaw Does Not Apply to Former Stockholder

In *Strougo v. Hollander*, the Delaware Court of Chancery held that a fee-shifting bylaw did not apply to a former stockholder's challenge to the fairness of a 10,000-to-1 reverse stock split that the corporation undertook in connection with a going-private transaction because (i) the bylaw was adopted after the stockholder's interest in the corporation ceased to exist due to the reverse stock split and (ii) Delaware law does not authorize a bylaw that regulates the rights or powers of former stockholders. While the proposed 2015 amendments to the Delaware General Corporation Law (the "DGCL"), described below, if adopted, would themselves invalidate fee-shifting provisions in corporate charters and bylaws, Delaware corporations should consider the implications of this opinion's holding that former stockholders are not bound by bylaws (or, by implication, charter provisions) adopted after their interests as stockholders cease to exist. For more, click [here](#).

Proposed 2015 Amendments to the Delaware General Corporation Law Affect Fee-Shifting Charter and Bylaw Provisions

The debate over the validity of fee-shifting bylaws may be put to rest with the coming session of the Delaware legislature. On March 6, 2015, the Corporation Law Council, a committee of the Corporation Law Section of the Delaware State Bar Association, proposed two amendments to the DGCL to prohibit fee-shifting provisions in charters and bylaws. More specifically, those amendments would:

- Revise Section 102 to add a new subsection (f), stating that a Delaware corporation’s charter “may not contain any provision that would impose liability on a stockholder for the attorneys’ fees or expenses of the corporation or any other party in connection with” claims pertaining to the corporation’s internal affairs; and
- Revise Section 109(b) to include a new clause, providing that the “bylaws may not contain any provision that would impose liability on a stockholder for the attorneys’ fees or expenses of the corporation or any other party in connection with” claims pertaining to the corporation’s internal affairs.

If the proposed amendments are ultimately adopted, fee-shifting charter and bylaw provisions for corporations will become invalid.

Delaware Rapid Arbitration Act

On March 31, 2015, the Delaware General Assembly passed the Delaware Rapid Arbitration Act (the “Arbitration Act”). The Arbitration Act allows Delaware business entities to resolve disputes through an expedited voluntary arbitration that must be completed within 120 days, subject to extension of up to 180 days upon unanimous consent of the parties and the arbitrator. The Arbitration Act vests the arbitrator with exclusive jurisdiction to determine the scope of the arbitration, thus eliminating the Delaware courts’ role in determining substantive arbitrability in certain cases. The Arbitration Act further expedites arbitrations by providing for a single direct challenge to the Delaware Supreme Court where the challenge is limited to review under standards of the Federal Arbitration Act, unless the parties agree to no appellate review or appellate review by an appellate arbitrator. This Arbitration Act is expected to be signed into law by the Governor.

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M&A Markets

The following issues of M&A at a Glance, our monthly newsletter on trends in the M&A marketplace and the structural and legal issues that arise in M&A transactions, were published this quarter. Each issue can be accessed by clicking on the date of each publication below.

➤ [January 2015](#) ➤ [February 2015](#) ➤ [March 2015](#)

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This publication is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this publication should be directed to:

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