



Sidley Perspectives

ON M&A AND CORPORATE GOVERNANCE

2022 DEVELOPMENTS COVERED IN *SIDLEY PERSPECTIVES*

Mergers & Acquisitions

- **Appraisal – Delaware**

- [Delaware Court Reserves Dismissal of Post-Merger Claim That Directors Breached Fiduciary Duties in Order to Dissuade Stockholders From Exercising Appraisal Rights](#) (July)

- **Due Diligence**

- [Privacy and Cybersecurity Risks in Transactions – Impacts From Artificial Intelligence and Machine Learning, Addressing Security Incidents and Other Diligence Considerations](#) (March)

- **M&A Agreement Terms**

- [Litigation Trends in Delaware and How Businesses and Boards Can Mitigate Risk](#) (The Sidley Podcast, February)
- [Acquiror May Be Liable After Agent Wires Merger Consideration to Hackers](#) (April)
- [To Bond or Not to Bond: Enforceability of Contractual Waivers of Bond Requirements for Injunctive Relief](#) (August)
- [Delaware Courts Closely Examine Indemnification Claims for Attorneys’ Fees, “Whether or Not” the Parties Intend](#) (September)
- [Delaware Chancery Court Finds Scope of Restrictive Covenants Unreasonable in the Context of a Business Sale](#) (October)

- **M&A Outlook**

- [2023 M&A Outlook: Q&A with 12 Top Global M&A Dealmakers](#) (Report with *Mergermarket*, December)

- **Special Purpose Acquisition Companies (SPACs)**

- [New School SPAC Subject to Old School Rules: Delaware Court of Chancery Rejects SPAC Sponsor’s Motion to Dismiss](#) (January)
- [De-SPAC Mergers Facing Increased Scrutiny](#) (*Daily Journal*, June)

- **Standards of Judicial Review**

- [Corwin Cleanse Clarified: Key Lessons for Interested Directors](#) (March)
- [All Roads Lead to Fair Price: The *Tesla* Decision](#) (April)
- [Delaware Chancery Court Denies Motions to Dismiss Claims That an Activist Fund’s Board Rep Fast-Track Sale to Maximize Insider Trading Profits](#) (May)
- [Combating Allegations of “Divided Loyalty”: Important Lessons for Private Equity and Venture Capital Controlling Stockholders](#) (June)

MFW Doctrine – Application of Business Judgment Rule in Certain Transactions Involving a Controller

- [Key Learnings Regarding the Protectiveness of the MFW Process for Controlling Stockholder Transactions](#) (July)

Shareholder Activism

- **Advance Notice Bylaws**
 - [Court to Activists \(Again\): Follow the Rules or Suffer the Consequences](#) (February)
 - [Considerations When Adopting or Amending Advance Notice Bylaws](#) (December)
- **Universal Proxy**
 - [ISS Provides Guidance on the Universal Proxy Card, Puts “Weakest” Directors on Notice](#) (Sidley Update, August)
 - [SEC Universal Proxy Rules Amplify Proxy Contest Threats for Companies](#) (September)
 - [Universal Proxy Card Resource Center](#) (Sidley website)

Corporate Governance

- **Board Communications**
 - [A Recent Reminder for Outside Directors: Your Emails May Be Fair Game](#) (January)
- **Board Diversity**
 - [Institutional Investors Continue to Increase Their Expectations Regarding Board Diversity](#) (March)
 - [Two California Laws Mandating Board Diversity Are Struck Down as Unconstitutional](#) (May)
- **Board Oversight**
 - [Best Practices for Minute-Taking: Three Lessons from Recent *Caremark* Decisions](#) (March)
 - [Board’s Good-Faith Oversight of “Mission Critical” Risks Insulates Directors From *Caremark* Claim](#) (June)
 - [Board Oversight of Compliance Risk](#) (November)
- **Environmental, Social and Governance (ESG) Matters**
 - [SEC Proposes Far-Reaching Rules for “Enhancement and Standardization” of Climate-Related Disclosures](#) (March)
 - [Governance Challenges 2022: Legal Considerations for Oversight of Climate-Related Risks](#) (NACD, May)
 - [SEC Brings First ESG-Related Action Since Creating Climate and ESG Task Force](#) (Sidley Update, May)
 - [A Board’s Guide to Oversight of ESG](#) (June)
 - [EU Corporate Sustainability Reporting Directive—What Do UK- and U.S.- Headquartered Companies Need to Know?](#) (Sidley Update, August)
 - [How the Supreme Court’s EPA Ruling Complicates Climate Action and What Companies Can Do](#) (Sidley Update, August)
 - [Getting the Deal Through—ESG & Impact Investing 2023](#) (*Getting the Deal Through*, August)
 - [Proposed Climate Disclosure Requirements for Federal Contractors Go Beyond the SEC’s Proposed Disclosures](#) (Sidley Update, November)
 - [DOL Issues Final Rule on Consideration of ESG Factors and Exercise of Shareholder Rights by Retirement Plan Fiduciaries](#) (Sidley Update, December)
- **Executive Compensation**
 - [SEC Again Reopens Comment Period on Proposed Compensation Clawback Rules and Posts Staff Memo With Supplemental Analyses and Data](#) (June)
 - [Final SEC Pay-Versus-Performance Rule Will Require Extensive New Disclosures in 2023 Proxy Statements](#) (August)
 - [SEC Adopts Final Compensation Clawback Rules](#) (October)

- **Forum Selection**
 - [The Forum Selection Saga Continues](#) (October)
- **Insider Trading**
 - [SEC Adopts Significant Changes to Rule 10b5-1 Trading Regime and Related Disclosures](#) (December)
- **Officer Exculpation**
 - [DGCL Amendment Allows Delaware Corporations to Amend Charters to Exculpate Officers From Personal Liability](#) (August)
- **Proxy Season Developments**
 - [SEC Proposes Amendments to the Substantial Implementation, Duplication, and Resubmission Bases for Excluding Shareholder Proposals](#) (July)
 - [ISS and Glass Lewis Policy Updates for 2023](#) (December)
- **SEC Reporting-Related Updates**
 - [Preparing Your 2021 Form 10-K: A Summary of Recent Key Disclosure Developments, Priorities and Trends](#) (Sidley Update, February)
 - [SEC Proposes to Shorten Beneficial Ownership Reporting Deadlines, Expand Scope—How Will It Affect You?](#) (Sidley Update, February)
 - [SEC Publishes Sample Comment Letter on Disclosure Obligations Relating to Russia’s Invasion of Ukraine and Related Supply Chain Issues](#) (May)
 - [SEC to Require Electronic Filing of Forms 144 via EDGAR](#) (June)
 - [New SEC Comment Letter Initiative Seeks More Tailored Disclosures About Board Leadership Structure and Role in Risk Oversight](#) (September)
 - [New Guidance Illustrates SEC’s Continued Scrutiny of Non-GAAP Reporting](#) (December)
- **Other Corporate Governance-Related Updates**
 - [Should Highly Regulated Public Companies Have Board-Level Compliance Committees?](#) (*CEP Magazine*, November 2021)
 - [Ten Questions to Ask Before Joining a Public Company Board of Directors](#) (March)
 - [A Delaware Section 220 Checklist: Seven Cases Every Practitioner Should Know](#) (March)
 - [CII Joins Global Investor Group to Launch Campaign Targeting Dual-Class Share Structures](#) (June)
 - [Best Practices for Auto Boards During Industry Revolution](#) (August)
 - [Speaking Out On What Matters](#) (*Ethical Boardroom*, September)
 - [Establishing Norms for Director Behavior to Enhance Board Culture and Effectiveness](#) (September)
 - [Collaborative Crisis Management: Prepare, Execute, Recover, Repeat](#) (Book by Sidley lawyer Tom Cole, September)
 - [NACD Report: The Future of the American Board: A Framework for Governing into the Future](#) (October)

Regulatory-Related

- **Antitrust**
 - [Remedying Deals With Antitrust Issues Has Gotten Harder](#) (March)
 - [Convergence in Antitrust and Privacy Law: An Interview With Colleen Brown and New Partner Sean Royall](#) (May)
 - [UK Merger Control: CMA’s Tough Approach; Changes to Thresholds Afoot](#) (June)

Interlocking Directorates

- [FTC Releases 2022 Thresholds for Hart-Scott-Rodino Filings and Interlocking Directorates, Raises Maximum Per Diem HSR Penalty](#) (Sidley Update, January)
- [Interlocking Directorate Agency Initiative Outside M&A](#) (September)
- [The U.S. Department of Justice May Clamp Down on Life Sciences Companies That Share Board Members With Alleged Competitors](#) (Sidley Update, November)
- [Interlocking Directorates and Deputization](#) (December)
- **CFIUS / Foreign Investment**
 - [Executive Order Directs CFIUS to Conduct Broad National Security Analysis When Evaluating Transactions](#) (September)
 - [What Do the First-Ever CFIUS Enforcement and Penalty Guidelines Mean for Your Business?](#) (October)
- **Corporate Compliance**
 - [With Successful Prosecution of CEO, DOJ Raises the Stakes for Corporate Executives](#) (Sidley Update, February)
 - [DOJ Leadership Highlights Focus on Individual Culpability and Victims' Restitution in White-Collar Prosecutions](#) (Sidley Update, March)
 - [U.S. DOJ's Compliance Certifications Put Chief Compliance Officers in Criminal Crosshairs](#) (Sidley Update, June)
 - [New DOJ Compliance Chief Signals Increased Compliance Program Scrutiny](#) (Sidley Update, September)
 - [Making Sense of DOJ's New Monaco Memo on Corporate Enforcement](#) (September)
- **Cybersecurity**
 - [SEC Proposes New Cybersecurity Risk Management and Governance Rules for Public Companies](#) (March)
 - [Congress Passes Cyber Incident Reporting for Critical Infrastructure Act of 2022](#) (Sidley Update, March)
 - ['Cyclops Blink' Shows Why the SEC's Proposed Cybersecurity Disclosure Rule Could Undermine the Nation's Cybersecurity](#) (August)
 - [U.S. Major Questions Doctrine Could Affect Privacy and Cybersecurity Rulemakings at the FTC and SEC](#) (Sidley Update, September)
- **Tax**
 - [New 15% Corporate Minimum Tax: Short Summary and Potential Impact on Mergers and Acquisitions](#) (Sidley Update, August)
 - [New 1% Excise Tax on Stock Repurchases by Publicly Traded Corporations](#) (Sidley Update, August)
 - [Voluntary Disclosures Prove a Useful Tool in Tax Liability Talks](#) (November)

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