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Delaware Supreme Court Affirms Two-Condition *MFW* Roadmap to Obtain Business Judgment Review of Controller Transactions

In an *en banc*, unanimous opinion in [In re Match Group, Inc. Derivative Litigation](#), the Delaware Supreme Court declined to provide a less burdensome path to business judgment review for self-interested controlling stockholder transactions that are not full “squeeze-out” mergers. Instead, the court’s opinion, by Chief Justice Collins J. Seitz, Jr., confirms that, in all transactions where the controller stands on both sides and receives a non-ratable benefit (including in non-squeeze-outs), entire fairness is the presumptive standard of review and defendants must demonstrate that they satisfied *both* prongs of the framework set forth in *Kahn v. M & F Worldwide Corp. (“MFW”)* to obtain business judgment review of the transaction. In addition, the opinion confirms that in the *MFW* setting, to replicate arm’s-length bargaining, *all* committee members, not just a majority of the committee, must be independent of the controller. *Match* therefore affirms that *MFW* remains the only path under Delaware law to invoke business judgment review in self-interested controller transactions and clarifies the need to ensure the independence of each special committee member in order to rely on *MFW*’s protections.

Background

In its seminal 2014 *MFW* opinion, the Delaware Supreme Court held, in the context of a controller squeeze-out transaction where minority holders sell their shares and are not stockholders of the surviving entity, that the transaction will be subject to business judgment review if it is conditioned from the start on both (i) approval by a special committee of independent directors that is fully empowered and meets its duty of care and (ii) the fully informed, uncoerced vote of a majority of the minority stockholders. After *MFW* was decided, the Court of Chancery also applied the *MFW* framework in a series of non-squeeze-out cases where the controller received a non-ratable benefit, which raised the question whether it was necessary to do so in those circumstances in order to obtain business judgment review of those transactions.

Match also arose in the context of a controller, non-squeeze-out transaction, specifically the 2020 separation of Match from its controlling stockholder, IAC/InterActiveCorp (“IAC”). IAC had conditioned the transaction from the start upon approval by an independent special committee and a vote of a majority of the minority stockholders. The Match board formed a three-member separation committee and empowered the committee to, among other things, approve or disapprove any proposed separation transaction. The transaction was ultimately approved by both the separation committee and a majority of the minority stockholders.

Plaintiffs, minority stockholders of Match, brought direct and derivative claims alleging, among other things, that the transaction was a controller transaction subject to entire fairness review, and that the business judgment rule did not apply under *MFW* because the separation committee was not fully independent. Initially, the Court of Chancery dismissed the complaint upon

finding that the transaction fully complied with the *MFW* requirements. Importantly, the Court of Chancery determined that the independent committee prong of the *MFW* framework was satisfied even though the complaint adequately alleged that one of the three directors on the separation committee lacked independence from IAC, reasoning that the allegedly non-independent director did not dominate or infect the proper functioning of the committee, which was comprised of a majority of independent directors.

Holding

On appeal, the Delaware Supreme Court affirmed in part and reversed in part, making two significant rulings.

First, the court confirmed that entire fairness remains the presumptive standard of review in any action challenging a transaction where the controller stands on both sides and receives a non-ratable benefit. In this situation, defendants must then demonstrate that they satisfied *both* prongs of the *MFW* framework in order to obtain business judgment review of the transaction. In so holding, and following a careful review of Delaware Supreme Court and Court of Chancery precedents spanning over 40 years, the court rejected the defendants' argument that the entire fairness standard of review (i) applies only to squeeze-out mergers and not to other types of conflicted controller transactions, or (ii) can be shifted to business judgment review if the transaction is approved by *either* an independent special committee *or* an uncoerced, fully informed, unaffiliated stockholder vote, without needing both approvals. As to the latter argument, the court confirmed that using only one of the two protective measures will shift the burden of proving entire fairness to the plaintiff, but will not alter the standard of review. The court also discussed that entire fairness may not be the presumptive standard of review if the controller does not receive a non-ratable benefit.

Second, the court clarified that *MFW*'s requirement for an independent committee mandates that the committee be "wholly" independent, not merely majority independent. Thus, because the *Match* plaintiffs adequately alleged facts in their complaint supporting a reasonable inference that one of the three members of the separation committee was not independent of IAC, the case could not be dismissed at the pleadings stage under the *MFW* framework.

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This memorandum 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 memorandum should be directed to:

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