

The Evolution of Delaware Corporate Law: Finding Certainty in Uncertain Times

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Introduction

Historically viewed as the epicenter of corporate law in the United States, Delaware has recently been at the forefront of fast-paced legislative developments grounded in a series of court decisions from late 2023 and early 2024 that sparked controversy in the business and legal community. On July 17, 2024, Delaware Governor John Carney signed a pivotal piece of legislation into law, introducing amendments to the Delaware General Corporation Law (“DGCL”) that took effect on August 1, 2024. These recent amendments to Title 8 of the Delaware Code mark a significant evolution in corporate law, reflecting a harmonization of the statute with the realities of modern business practice.

The amendments – colloquially referred to as the “market practice amendments” – bring Delaware corporate law in line with modern practice, permitting corporations incorporated in Delaware (which is the domicile of choice of most United States corporations)¹ to contractually delegate to stockholders certain governance controls that have historically been within the province of corporate directors and granting corporations and their boards greater flexibility in deal-making and approval of transaction agreements. These changes were intensely

debated by academics, Delaware legal practitioners and Wall Street deal-makers.² The amendments and ensuing debate followed a series of recent rulings by the Delaware Court of Chancery (the “Court of Chancery”), which highlighted discrepancies between established market practices and the Court’s strict application of the DGCL.³ By aligning the letter of the law with the practices commonly employed by corporate lawyers, the amendments aim to provide a legal framework that is both contemporary and conducive to the needs of today’s corporations and business transactions.⁴

While the impact of these amendments is notable, the rapidity with which the Delaware General Assembly (the “General Assembly”) responded to the Court of Chancery rulings is equally notable. This article examines the three court rulings that prompted legislative intervention, the immediate impact of these newly enacted amendments, and the key broader implications for those companies who are presently incorporated or are considering incorporation in Delaware.

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1 - See *Delaware Division of Corporations: 2023 Annual Report*, <https://corpfiles.delaware.gov/Annual-Reports/Division-of-Corporations-2023-Annual-Report.pdf>: “In 2023, more than 298,165 entities were formed in the First State. As precedent shows, the First State continues to lead as the domicile of choice for Fortune 500 companies at nearly 67.6 percent. Approximately 80% of all U.S. initial public offerings in 2023 were registered in Delaware.”

2 - See Jeff Montgomery, *Del. Gov. Signs Hotly Contested Corp. Law Amendments*, Law360(July 17, 2024), <https://www.law360.com/articles/1859337/del-gov-signs-hotly-contested-corp-law-amendments>.

3 - See *W. Palm Beach Firefighters’ Pension Fund v. Moelis & Co.*, 311 A.3d 809 (Del. Ch. 2024) (“*Moelis*”).

4 - See *Sjunde AP-Fonden v. Activision Blizzard, Inc.*, No. 2022-1001-KSJM, 2024 WL 863290, at *1 (Del. Ch. February 29, 2024 (as corrected March 19, 2024)) (“*Activision*”); *Crispo v. Musk*, 304 A.3d 567, 584 (Del. Ch. 2023) (“*Crispo*”).

I. The Court of Chancery's Textualist Approach

The Court of Chancery has long been known for its “textualist” approach to interpreting the DGCL.⁵ In other words, the Court of Chancery interprets the technical requirements of the DGCL strictly, pushing Delaware companies and their counsel to comply with the letter of the law. Delaware courts take the same approach when interpreting contracts, regularly emphasizing in decisions adjudicating the terms of an agreement that Delaware enforces contracts as written.⁶

There is of course significant value to Delaware companies and their advisors in this rigid approach. At least theoretically, such an approach facilitates predictability in how laws will be applied and interpreted, which in turn should foster greater clarity around the formation, governance and operational expectations for companies and their stockholders. But what happens when market practice begins to diverge from the exacting requirements of the DGCL?

The decisions in *Moelis*, *Activision*, and *Crispo* make plain that the Court of Chancery does not tolerate non-compliance with the statutory technicalities, even if the substantive action would have been permissible under Delaware law if such technicalities had been followed (and indeed, even if routine market practice does not strictly comply with those technicalities). The market's reaction to those decisions made equally apparent, however, that where the Court of Chancery upends market expectations, significant uncertainty follows.

5 - See, e.g., *Espinoza v. Zuckerberg*, 124 A.3d 47, 57-58 (Del. Ch. 2015) (noting that the requirements of Section 228 must be strictly complied with if any semblance of corporate order is to be maintained); *Sinchareonkul v. Fahnmann*, 2015 WL 292314, at *6 (Del. Ch. January 22, 2015) (explaining that a bylaw that conflicts with the DGCL is void); *Manti Holdings, LLC v. Authentix Acquisition Co., Inc.*, 261 A.3d 1199, 1214 (Del. 2021) (“If the statute is found to be clear and unambiguous, then the plain meaning of the statutory language controls.”).

6 - See, e.g., *Manti Holdings*, 261 A.3d at 1214 (highlighting the enforcement of contracts as written); *Stream TV Networks, Inc. v. SeeCubic, Inc.*, 279 A.3d 323, 338 (Del. 2022) (emphasizing the importance of interpreting clear and unambiguous contract terms in accordance to their “plain meaning”) (citation omitted); *Touch of It. Salumeria & Pasticceria, LLC v. Bascio*, 2014 WL 108895, at *4 (Del. Ch. January 13, 2014) (“[R]ecognizing that LLCs are creatures of contract, I must enforce LLC agreements as written.”).

II. Recent Chancery Rulings and Resulting Legislative Amendments

A. Stockholder Agreements: *Moelis* and Senate Bill 313 (“SB 313”)

1. Court of Chancery Rejects Allocation of Governance Authority by Stockholder Agreement

In *Moelis*, Vice Chancellor Laster scrutinized a stockholder agreement that allocated to the company's founding stockholder, CEO, and chairman of the board, certain governance authorities that, under DGCL Section 141(a), are within the provenance of the company's board of directors. Specifically, Section 141(a) requires that “[t]he business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation.”⁷

The *Moelis* agreement provided the stockholder with considerable influence, including (i) 18 corporate actions that the board could not take without the stockholder's approval, (ii) the right to set the size of the board, fill vacancies, nominate a majority of its members, and mandate that certain candidates selected by the stockholder be nominated, and (iii) the right to approve the formation of any independent committee and a requirement that any committee be proportionally filled with directors appointed by the stockholder.

To assess whether the provisions were viable under Section 141(a), the Court undertook a two-part inquiry. First, the Court considered whether the provisions were part of an internal governance arrangement of the corporation by applying a seven-factor test.⁸ After concluding that most of the provisions in the stockholder agreement did concern governance matters, the Court evaluated whether the provisions

7 - DEL. CODE tit. 8, § 141(a); see also *Moelis*, 311 A.3d at 817 (citing *Quickturn Design Sys., Inc. v. Shapiro (Quickturn II)*, 721 A.2d 1281, 1291-92 (Del. 1998)) (noting that, under DGCL Section 141(a), “the board . . . has the ultimate responsibility for managing the business and affairs of a corporation . . .” including the “full power to manage and direct the business and affairs of a Delaware corporation”) (emphasis in original).

8 - *Id.* at 859. The Court analyzed whether: (1) the agreement “ha[s] a statutory grounding in a section of the DGCL”; (2) “the corporation's counterparties in a governance agreement hold roles as intra-corporate actors”; (3) the challenged provisions seek to specify the terms on which intra-corporate actors can authorize the corporation's exercise of its corporate power”; (4) the agreement “does not readily reveal an underlying commercial exchange,” as well as; (5) “the relationship between the contractual restrictions and a commercial purpose”; (6) “the presumptive remedy for a breach”; and (7) the “duration of the contract and the corporation's ability to terminate it.”

violated the so-called *Abercrombie* test by significantly undermining the directors' duty to exercise independent judgment or impinging upon "the freedom of director decisions on matters of management policy."⁹ The Court found that the majority of the provisions impermissibly did so, noting both the intent and the duration of the agreement.

In so holding, the Court acknowledged that stockholder agreements had become commonplace in recent decades and that the Court does "consider market practice, because market practice can reflect the judgments of experienced counsel about what is possible under Delaware law." The Court nevertheless emphasized that "market practice is not law" and invited the General Assembly to weigh in, explaining that "[w]hen the General Assembly has enacted a statute, a court's job is to enforce the statute, even if that has implications for market practice" and noting that "greater statutory guidance may be beneficial."¹⁰

2. The Legislature Expressly Permits Stockholder Agreements

The Delaware legislature promptly answered Vice Chancellor Laster's call to action by amending Section 122 of the DGCL, which governs the powers of Delaware corporations.¹¹ The amendment adds subsection (18) and explicitly permits corporations to enter into contracts with stockholders for minimum consideration that include governance provisions like those invalidated in *Moelis*, such as:

- the restriction or prohibition of certain future corporate actions;
- the requirement for approval or consent from designated individuals or entities, such as the board of directors, stockholders, or beneficial owners, before the corporation can undertake certain actions; and
- the inclusion of covenants obligating the corporation or specified parties (including the board, one or more current or future directors, stockholders or beneficial owners) to take or abstain from certain actions specified in the contract.¹²

9 - *Id.* at 859, 860 (citation omitted).

10 - *Id.* at 878-79.

11 - Sections 122 and 141 of the DGCL serve distinct but complementary roles in delineating the powers and responsibilities within a corporation. Section 141 allocates to the board the authority to manage the corporation, whereas Section 122 outlines the powers granted to corporations generally, enumerating inherent rights such as the power to sue and be sued, to own and sell property, and to make contracts. The amendment was designed to address the issues raised in *Moelis* without encroaching on the fundamental governance role of the board as established in Section 141.

12 - S.B. 313, 152d Gen. Assemb. (Del. 2024) (to be codified at

This amendment effectively codified practices that were common in the market but inconsistent with statutory requirements that were then in effect, as highlighted by the *Moelis* decision. It provides corporations with a clear statutory basis for entering into and enforcing agreements with stockholders that include the types of provisions listed above, such as pre-IPO agreements among investors and settlement agreements with activist stockholders.

B. Merger Approval by the Board: Activision

1. Court of Chancery Suggests Board Approval of Incomplete Agreement May Be Inadequate under DGCL Section 251

In *Activision*, the Court of Chancery denied the defendants' motion to dismiss after identifying potential procedural deficiencies in Microsoft's acquisition of Activision, including that the approval of the merger agreement by the board of directors may not have complied with Section 251 of the DGCL.¹³

The plaintiff argued that Delaware law required the board to approve an execution version of the merger agreement, while the defendants asserted that an overly strict interpretation of the statute that "runs contrary to market practice" would create "uncertainty about the validity of mergers' [*sic*] generally" and potentially discourage mergers by imposing onerous requirements on the board's approval process, which would "disserve Delaware's longstanding public policy of encouraging mergers."¹⁴

The Court declined to dismiss the complaint based on the defendants' arguments. Without conclusively holding that a board must approve an execution version of the merger agreement, the Court found that, at minimum, the DGCL requires board approval of an "essentially complete" version of the agreement.¹⁵ The Court found in particular that the Activision board had approved a merger agreement that was missing critical components, such as the amount of consideration, dividend provision, disclosure schedules and the surviving company's charter.

The Court reasoned that "[u]nder the essentially complete interpretation, Defendants' market-practice

DEL. CODE tit. 8, § 122) ("S.B. 313").

13 - Section 251(b) of the DGCL governs the steps necessary for a corporation's board of directors to approve a merger or consolidation. The provision requires the board to "adopt a resolution approving an agreement of merger or consolidation and declaring its advisability" and articulates the required contents of the agreement. DEL. CODE tit. 8, § 251(b).

14 - *Activision*, 2024 WL 863290, at *6 (citation omitted).

15 - *Id.* at *7.

gripe falls away. There is no straight-faced argument that requiring a board to approve an essentially complete version of a merger agreement is commercially unreasonable.”¹⁶ Relying on the “persuasively” written *Moelis* decision, the Court concluded that “[w] here market practice exceeds the generous bounds of private ordering afforded by the DGCL, then market practice needs to check itself.”¹⁷ The Court underscored that the DGCL represents the embodiment of Delaware’s public policy, and again quoting *Moelis*, noted that when a statute is enacted by the General Assembly “[a] court is not free to disregard it.”¹⁸

2. The Legislature Aligns the DGCL with Real-World Practice of Merger Approvals

Complex and fast-moving transactions often result in the parties negotiating the terms of merger agreements and disclosure schedules “up until the moment a deal closes, if not beyond.”¹⁹ The time-sensitive nature of getting a deal signed makes it virtually certain that the parties “do not pause efforts for board approval.”²⁰ Simply because certain key aspects of a transaction – such as the price or the treatment of stock dividends – have been agreed and conveyed to the board but not yet finalized in drafting, it does not necessarily follow that the board lacks adequate information to approve a merger agreement. Although the Court of Chancery acknowledged this reality, it nevertheless interpreted the strictures of the DGCL to require approval of an “essentially complete” agreement.

The newly instituted Section 147 of the DGCL introduces a more flexible standard, allowing boards to approve a merger agreement that is either *final* or *substantially final* – in other words, the prevailing norm challenged in *Activision*. Although “substantially final” is not explicitly defined within Section 147, the synopsis notes that approval of an agreement that includes all material terms is appropriate, as well as approval where the material terms can be determined from other information or materials available or known to the board.²¹ To further support this flexibility, Section 147 grants boards the authority to ratify a previously approved merger agreement at any point before the merger certificate is filed. Such post hoc ratification is retroactive, effectively dating back to the initial approval date.

16 - *Id.*

17 - *Id.* at *6.

18 - *Id.* at *7.

19 - *Id.* at *6.

20 - *Id.*

21 - S.B. 313 (codified at Del. Code tit. 8, § 147); see also *id.* at pp. 8–9 (Synopsis).

Governor Carney signed into effect three additional amendments concerning the required contents of a merger agreement and notice, all of which are intended to address potential procedural flaws identified in *Activision*:

- Section 268(a) clarifies that in a merger (other than under DGCL § 251(g)) where all of the shares of stock of a constituent corporation will be converted or exchanged for cash or securities (other than the stock of the surviving corporation), then the merger agreement need not contain any provision concerning the charter of the surviving corporation.²²
- Section 268(b) provides that unless a merger agreement provides otherwise, disclosure schedules relating to representations, warranties, covenants, or conditions are not deemed to be part of the agreement for purposes of the DGCL and thus do not require formal board approval or disclosure to stockholders (though material information set forth in disclosure schedules must still be disclosed to the board).²³
- Section 232(g) confirms that all document enclosed with, or appended or annexed to, a notice sent via mail or courier service are deemed part of the notice for purposes of determining whether notice was duly given to stockholders under the DGCL for voting purposes.²⁴

These amendments reflect a conscious effort to streamline corporate procedures and provide clarity to the governance of mergers and acquisitions within the jurisdiction of Delaware, all well within well-established market practice amongst deal practitioners.

C. Contract Provisions Governing Lost Stockholder Premiums: Crispo

1. Court of Chancery Undercuts Enforceability of *ConEd* Provisions

In *Crispo*,²⁵ the Court of Chancery questioned the prevailing market practice of including in merger agreements contractual provisions that purport to permit recovery from a buyer of lost stockholder premium damages in the event that the buyer

22 - *Id.* (codified at DEL. CODE tit. 8, § 268(a)).

23 - *Id.* (codified at DEL. CODE tit. 8, § 268(b)).

24 - *Id.* (codified at DEL. CODE tit. 8, § 232(g)).

25 - 304 A.3d at 584.

wrongfully terminates the agreement. The practice of including provisions that either define damages by reference to lost premium or designate stockholders as third-party beneficiaries emerged in response to the Second Circuit's decision in *Consolidated Edison v. Northeast Utilities* (“*ConEd*”), which held that stockholders were not third-party beneficiaries in a merger and thus had no standing to either enforce a merger agreement or to seek damages from a buyer that breached the agreement by refusing to close.²⁶

The merger agreement at issue in *Crispo* contained a *ConEd* provision that permitted lost-premium damages in the event of a willful breach by the buyer. The Court observed that the term was potentially unenforceable because it conflicted with the principle that a party cannot recover more than expectation damages. The Court explained that “[w]here a target company has no entitlement to a premium in the event the deal is consummated, it has no entitlement to lost-premium damages in the event of a busted deal.”²⁷ Thus, “a provision purporting to define a target company’s damages to include lost-premium damages cannot be enforced by the target company.”²⁸

The Court suggested that the only way to give effect to such a provision would be to interpret it as granting stockholder third-party beneficiary status that vests only in narrow circumstances and for the limited purpose of seeking lost-premium damages.²⁹ For a host of practical reasons, however, including the risk that the target company would lose control of the litigation if stockholders had the right to pursue damages directly, parties to a deal are often reluctant to agree to such provisions. The Court also questioned whether another form of a *ConEd* provision, designating the target company as the agent for recovering damages on behalf of its stockholders, could be unilaterally enforced by the target, given that the stockholders would not have themselves agreed to such an agency relationship.³⁰ In other words, the Court effectively undercut real-world workarounds to a somewhat intractable problem.

26 - 426 F.3d 524 (2d Cir. 2005) (holding that stockholders were not third-party beneficiaries and thus had no standing to either enforce a merger agreement or to seek damages from a buyer that breached the agreement by refusing to close).

27 - *Crispo*, 304 A.3d at 584.

28 - *Id.*

29 - *Id.* at 585.

30 - *Id.* at 581.

2. Legislative Amendment Permits Lost-Premium Damages and Stockholder Representatives

Section 261 of the DGCL was amended to add two new paragraphs (1) and (2) to subsection (a) that address the enforceability problems outlined in *Crispo*.³¹

Section 261(a)(1) expressly permits parties to agree that the seller can recover “damages based on the lost premium that stockholders of a constituent corporation would be entitled to receive if the merger becomes effective in accordance with the terms of the agreement.”³² This resolves the enforceability problem outlined in *Crispo* concerning expectation damages by specifically protecting that remedy by statute where it is included in an agreement. The synopsis explains that the amendment is consistent with Delaware’s goal of enabling constituent corporations to exercise “the latitude to allocate the risk of non-performance by [express] provisions.”³³

The newly amended Section 261(a)(2) permits a merger agreement to designate one or more persons as representatives for the stockholders of a constituent corporation, empowering them to enforce the stockholders’ rights as stipulated in the agreement, with the terms and conditions clearly outlined.³⁴ The synopsis explained that this amendment codified the market practice that had evolved in Delaware to appoint a stockholders’ representative where the shares of the company are cancelled and converted (into cash or other property) via a merger. The permissive scope of appointment is limited to only the enforcement of the rights of stockholders under the pertinent agreement, though of course groups of stockholders may themselves agree to delegate other of their rights to the agent.³⁵

III. Finding Stability in Evolution

While the legislative amendments generated significant debate among legal scholars and practitioners in the United States, they also demonstrated that Delaware is uniquely positioned to swiftly respond to calls for change in the law. Less than a year after the *Moelis*, *Activision*, and *Crispo* decisions were issued, the Delaware legislature revised the DGCL to more closely align with modern practice. While practitioners endeavored in real time to

31 - S.B. 313 (codified at DEL. CODE tit. 8, § 261(a)(1–2)).

32 - S.B. 313 at p. 9 (Synopsis).

33 - *Id.*

34 - S.B. 313 (codified at DEL. CODE tit. 8, § 261(a)(2)).

35 - S.B. 313 at p. 10 (Synopsis).

find workarounds to these decisions, the Council of the Corporation Law Section of the Delaware State Bar Association (the “Council”) was quickly drafting and debating potential statutory amendments to resolve the dissonance between the rulings and established market practices. The Council is a unique and highly valuable feature of Delaware’s legal system, composed of experienced corporate law experts who play a crucial role in maintaining the state’s preeminence in corporate law.

Many praised the Council and the General Assembly, lauding SB 313 as an efficient legislative response to the Court of Chancery’s call to clarify the DGCL and a much-needed vehicle to align the law with how common practice in the marketplace had evolved over time.³⁶ These amendments – and the process by which they were accomplished – did not go unopposed, however. Some legal experts and lawmakers claimed the amendments are a “bailout for private equity” and contended that the amendments will dismantle corporate democracy and damage Delaware’s reputation as the go-to state of incorporation for companies.³⁷ Others argued that the amendments would undermine the authority of the Delaware Supreme Court to review the challenged decisions.³⁸ Still others expressed concerns about the speed at which SB 313 moved through the legislative

process, warning that the amendments might have unintended consequences that had not yet been identified because the analysis was moving too quickly.³⁹

The truth lies somewhere in between. Delaware courts’ steadfast adherence to a textualist interpretation of the DGCL underscores a broader commitment to legal stability. The Chancery’s recent decisions serve as a reminder that while market practices may evolve, they must do so within the bounds of the law. This approach provides a predictable and stable foundation upon which the law can adapt. That said, adaptation is necessary: continuing to enforce dated technical requirements risks fomenting the growth of lawyer-driven litigation seeking to capitalize on variances that some might characterize as foot-faults – the opposite of the jurisdiction’s preferred approach. Though some have perceived legislative overreach in the General Assembly’s response to the Chancery’s rulings, updating the law to reflect modern realities with the invaluable input of the Council, which provides guidance founded in real-life expertise, ultimately facilitates more efficient enforcement and greater certainty for practitioners. This collaborative and responsive legal ecosystem ensures that Delaware’s corporate law remains at the forefront of addressing the complex and evolving needs of the business community, while maintaining the rule of law and the principles of corporate governance.

Conclusion

The General Assembly’s swift enactment of SB 313 demonstrates its willingness to act when the law is perceived as antiquated and its responsiveness to the needs and expectations of the business community. By codifying practices that were common in the market but lacked clear legal sanction following the Court of Chancery’s decisions in *Moelis*, *Activision*, and *Crispo*, the General Assembly has offered greater clarity and protection to Delaware corporations and their stockholders. If, as critics have cautioned, the

36 - See, e.g., Lawrence Hamermesh, *Letter in Support of the Proposed Amendments to § 122 DGCL*, HARV. L. SCH. F. ON CORP. GOVERNANCE (June 11, 2024), <https://corpgov.law.harvard.edu/2024/06/11/letter-in-support-of-the-proposed-amendments-to-%C2%A7-122-dgcl/> (“[T]he court said [in *Moelis*] that ‘the General Assembly could enact a provision stating what stockholder agreements can do.’ S.B. 313 responds directly to that invitation: the proposed amendments to Section 122 are vastly superior in predictability and clarity compared to the state of affairs prevailing under the current statute, as interpreted by the Court of Chancery . . . The need for such guidance is urgent, and the Delaware State Bar Association and its constituent groups should be commended, not condemned, for quickly and carefully preparing and presenting the draft amendments to the Delaware General Assembly that allow it to act before the current legislative session ends on June 30.”).

37 - See, e.g., Jordan Howell, *Dissent in House Judiciary over Controversial Corporate Amendments*, DEL. CALL (June 19, 2024), <https://delawarecall.com/2024/06/19/dissent-in-house-judiciary-over-controversial-corporate-amendments> (warning the General Assembly that passing the law “will send a clear message: Delaware courts don’t matter, Delaware jurists are not the legal experts we advertise them to be, and Delaware law is not a sound foundation upon which to make business decisions”).

38 - See, e.g., Michael Hanrahan, *Statement Regarding the Activision Amendments*, HARV. L. SCH. F. ON CORP. GOVERNANCE (July 10, 2024), <https://corpgov.law.harvard.edu/2024/07/10/statement-regarding-the-activision-amendments/>; Letter from Delaware Chancellor Kathleen St. Jude McCormick to the Delaware State Bar Association Executive Committee regarding Proposed DGCL Amendments (April 12, 2024), <https://s3.documentcloud.org/documents/24692528/mccormick-ltr-to-dsba.pdf> (“[SB 313] preempts the Delaware Supreme Court’s opportunity to act as the final arbiter of Delaware law, striking at two cases still being litigated before the Court of Chancery.”).

39 - See, e.g., Jeff Montgomery, *Delaware’s Corporate Law Debate Left ‘Blood on the Floor,’* LAW360 (June 21, 2024), https://www.law360.com/corporate/articles/1850449?nl_pk=f-d813a49-0840-408f-b0e1-d21200e5c3e0&utm_source=newsletter&utm_medium=email&utm_campaign=corporate&utm_content=2024-06-24&read_main=1&nlssid=0&nlaidx=0 (quoting University of Michigan law professor Gabriel V. Rauterberg, who stated, “[T]he risks of a hasty, consequential, and problematic set of amendments to the DGCL are already visible in the unrest among corporate law academics and the judiciary. Delaware corporate law is currently ‘off the equilibrium path’ so to say; this isn’t its normal state of play.”). A group of corporate law professors warned legislators that the amendment to Section 122(18) went too far, allowing “boards to unilaterally contract away their powers without any shareholder input.” Sarath Sanga, Gabriel Rauterberg & Eric Talley, *Letter in Opposition to the Proposed Amendment to the DGCL*, HARV. L. SCH. F. ON CORP. GOVERNANCE (June 7, 2024), <https://corpgov.law.harvard.edu/2024/06/07/letter-in-opposition-to-the-proposed-amendment-to-the-dgcl/>.

amendments result in unanticipated challenges, the same robust legal framework – from the courts to the legislature – should facilitate further evolution. While the recent Chancery decisions may give pause to some practitioners, and the legislative response has garnered both praise and criticism, Delaware remains the standard bearer for corporations – including for states like Texas, where the newly created business courts are intended to create an alternative forum for companies who are looking for a different destination for business.

