

Third Circuit Confirms Limits of the Best Price Rule

February 9, 2026

On February 3, 2026, the U.S. Court of Appeals for the Third Circuit issued a decision in *Abramowski v. Nuvei Corp.*, holding that the “Best Price Rule”—a tender offer rule intended to prevent differential treatment among similarly situated security holders—does not require an offeror to purchase tendered shares that it cannot lawfully acquire under the terms of the tender offer or applicable private agreements. The decision provides important guidance on the scope of the Best Price Rule and the interaction between federal tender offer regulations and private agreements governed by state law.

Best Price Rule. Rules 14d-10 and 13e-4(f)(8) under the Securities Exchange Act of 1934, as amended, are referred to as the “All Holders/Best Price Rule”. The All Holders Rule requires that a tender offer be open to all holders of the class of securities that is the subject of the offer. The Best Price Rule requires that the consideration paid to any security holder for securities purchased pursuant to the tender offer be at least equal to the highest consideration paid to any other security holder for securities purchased in the tender offer.

Background. The plaintiffs-appellants were holders of earnout shares in Paya Holdings, Inc., which became public in 2020 through a de-SPAC transaction with Fintech Acquisition Corp. III, a special purpose acquisition company founded by the plaintiffs. As part of the de-SPAC transaction, the plaintiffs entered into a sponsor support agreement pursuant to which certain of their shares in the SPAC were converted to earnout shares in Paya. Under that agreement, the earnout shares would become transferable upon a change of control if the price per share paid was above \$15.00. If a change of control occurred at a price below \$15.00 per share, the earnout shares would be automatically forfeited immediately prior to the consummation of the change of control.

In January 2023, Nuvei Corporation entered into an agreement to acquire Paya for \$9.75 per share in a transaction structured as a two-step merger under Section 251(h) of the Delaware General Corporation Law. Section 251(h) permits a corporation to effectuate a merger without requiring a stockholder vote to authorize the merger where the corporation first consummates a tender offer for all of the outstanding stock of the

target corporation, and as a result of the tender offer the acquiror owns enough stock to approve a merger. The terms of the tender offer required that shares tendered be freely transferable and outstanding at the time of acceptance. Nevertheless, the plaintiffs attempted to tender their earnout shares, which tender was rejected by Nuvei.

The plaintiffs filed suit in the U.S. District Court for the District of Delaware, asserting, among other things, that the tender offer violated the Best Price Rule. The defendants argued that the earnout shares were subject to transfer restrictions that made them ineligible for tender and that, in any case, they had been forfeited “immediately prior to” Nuvei’s acceptance of any shares for payment in the offer, at which point Nuvei gained control of Paya in a change of control transaction. The defendants argued that the Best Price Rule was therefore inapplicable, because it applies only to shares actually purchased in a tender offer—that is, the Best Price Rule did not require Nuvei to pay for the earnout shares, which could not have been purchased or validly tendered in the first place.

On October 17, 2024, the District Court granted the motion to dismiss in its entirety and denied the plaintiffs’ motion for summary judgment as moot. The plaintiffs appealed the dismissal of their Best Price Rule claim.

Decision of the Third Circuit. The Third Circuit affirmed the District Court’s dismissal, holding that the Best Price Rule applies only to shares that are actually “taken up and paid for” in a tender offer and does not require an offeror to purchase shares it cannot lawfully acquire.

The court observed that the Best Price Rule is “silent as to when, if ever, an offeror must purchase tendered shares or whether that offeror may include in the tender offer terms and conditions of acceptance, such as Nuvei’s requirement that the tendered shares be freely transferable or outstanding at the consummation of the change of control.” The court noted that the Best Price Rule did not obligate Nuvei to pay for shares that it did not, and could not, purchase. Rather, “[b]ecause federal law is silent on the issue presented, it is governed by the parties’ private agreements formed under state law.”

Takeaway. The Third Circuit’s precedential decision provides certainty to offerors that in a properly structured tender offer, the Best Price Rule will not apply to securities subject to transfer restrictions governed by prior private agreements.

The decision of the Third Circuit is available [here](#).

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Please do not hesitate to contact us with any questions.



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