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MARKETCHECK

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Editorial Board

Recent Developments in U.S.–China Trade Relationship

Despite conflicts in Europe and the Middle East and broader economic uncertainty, China continues to be the central focus of U.S. national security policy. The fraught political relationship between the United States and China impacts the countries' broader commercial relationship and presents regulatory, enforcement, and operational risks for businesses while simultaneously creating opportunities for companies that can anticipate shifting rules, structure transactions, and operations thoughtfully, and build compliance frameworks that can be sustained through U.S.–China tensions.

Citing national security concerns, the U.S. government continues to impose targeted restrictions on specific Chinese companies, investors, and activities, particularly those involved in advanced technology, critical infrastructure, communications infrastructure and key supply chains, while avoiding broader decoupling of the two economies. U.S. regulators have also tightened controls on advanced technologies and activities viewed as supporting U.S. adversaries and increased scrutiny of China-linked investments by the U.S. Committee on Foreign Investment (CFIUS), which reviews non-U.S. investments in U.S. businesses and real estate.

The following key areas of U.S. national security regulatory policy continue to have a significant impact on the U.S.–China trade relationship:

Economic Sanctions and Export Controls

U.S. economic sanctions and export controls targeting China and Chinese companies generally follow a paradigm seen consistently across the Obama, Trump 1.0, Biden, and now Trump 2.0 administrations—namely, a selective and relatively limited focus on certain issues, particularly technology competition and support for strategic adversaries of the United States, but a notable lack of broader, embargo-like restrictions that would force a greater split between less-sensitive sectors of the Chinese and U.S. economies. We expect this strategic approach to continue to be a defining feature of the U.S.–China trade relationship for the remainder of this administration, barring any events of significant geopolitical upheaval that cause more direct confrontation between China and the U.S. However, we hope that reported progress in recent trade-related negotiations results in greater clarity on certain issues related to sanctions and export compliance.

In a sign of a limited thaw in U.S.–China trade tensions, the second Trump administration has rolled back or limited the impact of earlier export controls adopted for national security reasons. In January

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2026, the U.S. Commerce Department's Bureau of Industry and Security (BIS), which implements and enforces U.S. export controls, revised its licensing policy for the export of certain semiconductors to China and Macau, effectively allowing the sale and export of certain Nvidia or equivalent chips, so long as the sales do not raise supply concerns for the U.S., and BIS approves the recipient (subject to a novel scheme that imposes an effective 25% "fee" on each chip exported to China under this authority). BIS explained that the change in licensing policy is "necessary to ensure the national security benefits of U.S. leadership in AI," meaning that, despite earlier concerns warranting a full ban on the export of such semiconductors to China, the current Trump administration now believes that the national security risks of allowing such advanced processors to flow to certain users in China could be acceptable if the commercial advantages for the U.S. AI industry outweigh those risks.

The other notable rollback of U.S. export controls occurred within the broader context of ongoing U.S.–China trade negotiations. Just prior to, and in apparent anticipation of, President Trump's October 2025 trip to Asia, BIS released a long-anticipated new rule that would extend the licensing requirements and restrictions mandated by designation on its Entity List[1] (and several other trade compliance lists that restrict exports to designated companies, universities, government bodies, and other entities) to any legal entity owned 50% or more by designated persons, with the result that many additional companies would automatically become subject to U.S. export restrictions (and a significant percentage of these newly restricted companies would be Chinese). However, following high-level meetings between China and the U.S., the White House announced that this rule would be suspended for one year—until November 2026—in exchange for China's suspension of its newly established controls on exports of certain "rare earth elements" to the U.S.

CFIUS and Inbound Investment

The U.S.'s CFIUS has for decades been a central tool of the U.S. government's foreign investment policy, and that remains true now in the U.S.'s current competition with China. The Trump administration's America First Investment Policy, released in February 2025, highlighted CFIUS as a primary vehicle for certain U.S. government objectives—including the tempering of Chinese government influence on the U.S. economy, and particularly strategic U.S. industries (e.g., defense, AI, and other industries raising national security concerns) through investments in the U.S. Specific efforts implicating CFIUS as a tool to combat such influence include the following:

- Restricting China-affiliated investors from investing in strategic sectors like technology, critical infrastructure, healthcare, agriculture, energy, and raw materials and restricting such investors' access to U.S. talent and operations in sensitive technologies, especially AI;
- Implementing restrictions on foreign investors that are to ease in proportion to a foreign investor's verifiable distance and independence from China;
- Expanding CFIUS review to address investments by foreign investors, including those tied to China-affiliated investors, in companies created in the U.S. by foreign parents (so-called "greenfield" investments);
- Ceasing the use of complex and open-ended mitigation agreements and ensuring that mitigation agreements consist of concrete actions that companies can complete within a specific period of time—suggesting that where national security concerns cannot be addressed through clear, time-bound mitigation measures (as may be the case for China-affiliated investors), transactions are more likely to be blocked rather than permitted subject to mitigation; and
- Welcoming passive investments from all foreign investors, including those affiliated with China,

1. The Entity List is maintained by the BIS and designates persons subject to additional export licensing requirements under the Export Administration Regulations to address U.S. national security or foreign policy concerns.

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so long as the investors hold only non-controlling stakes with no voting, board, or governance rights and no influence over or non-public access to technical or proprietary U.S. business information.

Many of the America First Investment Policy objectives align with CFIUS's pre-existing focus on China-affiliated investors. Beginning in the Obama administration and continuing in the first Trump administration through the Biden administration, CFIUS has heavily scrutinized foreign investors for Chinese ties, including by gathering extensive information on investors that do not have overt or obvious China connections. Recent efforts include requesting information about non-U.S. limited partners in private equity fund structures, even when such limited partners are passive or hold low levels of equity interest. CFIUS has sought information including limited partner identities and governance rights and required the sharing of such information even when it is subject to confidentiality protections. CFIUS has also sought information relating to non-U.S. strategic investors' commercial and supply-chain relationships in China or with China-affiliated parties. These information requests have continued to provide CFIUS with information it needs to determine which foreign investors are affiliated with China.

Implications for Businesses

Despite some limited rollback of U.S. trade restrictions, U.S. authorities continue to raise national security concerns about a wide range of business and investment activities involving China or Chinese companies. Going forward, companies should consider U.S.–China trade and investment tensions by strengthening related diligence across their transactions, supply chains, and data flows, particularly understanding their counterparties' ownership and assessing exposure in high sensitivity areas such as advanced technology, communications infrastructure, and pharmaceutical and biotech supply chains, and adopting appropriate controls to mitigate related compliance and reputational risks, such as utilizing relevant contractual protections and maintaining risk-based restrictions on access to sensitive data, goods, IT systems, and technologies.

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State Antitrust Enforcement Is Becoming a Deal-Critical Workstream

For years, merger control planning in the U.S. often began with a familiar question: "Is the deal HSR-reportable?" While that remains a good starting point, increased attention must be paid to the local landscape. State attorneys general and state agencies are asserting a more independent role in antitrust review, particularly where they perceive federal enforcement as under-resourced, politically constrained or insufficiently attentive to local harms. For dealmakers and counsel, the practical implication is clear: state antitrust risk can no longer be treated as derivative of the federal process.

Recent developments underscore the point. In May 2026, the attorneys general of Oregon, California, Washington, Nevada, and New York publicly claimed the existence of an "enforcement gap" as federal regulators' priorities shift and called for more state resources to police consolidation. In June 2026, Oregon lawmakers approved 16 new positions for the state DOJ's Antitrust Division, which the office says will double the number of attorneys and triple the division's overall capacity, an expansion intended to address the same perceived federal enforcement gap.[1] California has moved in the same direction through both enforcement and legislation, including a new state premerger notification law requiring certain HSR filers to submit HSR materials to the California Attorney General beginning January 1, 2027. Washington's Uniform Antitrust Premerger Notification Act, effective July 27, 2025, requires certain HSR filers to provide the state attorney general a contemporaneous copy of the federal form and, in some cases, additional documentary material.[2]

Recent matters show how this plays out in practice. In connection with the Kroger/Albertsons merger, Washington brought its own state-court challenge and obtained a ruling blocking the transaction under Washington law, alongside federal and multistate litigation. Colorado separately brought a state-court challenge that paired its merger claim with no-poach and non-solicitation allegations arising from the 2022 King Soopers strike.[3] The deal was officially terminated following the court decisions. In the proposed Paramount Skydance/Warner Bros. Discovery transaction, a coalition of 12 state attorneys general sued to block the deal even after DOJ clearance.[4] The court granted a temporary restraining order based on alleged effects in an alleged wide-release theatrical distribution market.[5] The merging parties are expected to contest the state AGs' claims vigorously. The suit illustrates that state AGs may be willing to pursue their own theories, even where federal clearance has been obtained. California has separately joined multistate challenges to broadcast consolidation, including Nexstar's acquisition of TEGNA. The coalition has also broadened: by late April 2026, California was leading a bipartisan group of 13 attorneys general challenging the $6.2 billion transaction.[6] The Nexstar/TEGNA transaction had closed in March following clearance by federal regulators but the companies remain enjoined from integrating due to the ongoing state AG challenges.

1. Oregon DOJ, "Attorney General Rayfield Secures Approval for 16 New Positions to Fight Corporate Mergers and Monopolies" (June 17, 2026).
2. Washington S.B. 5122 (effective July 27, 2025); Wash. Rev. Code § 19.420.020; California S.B. 25, ch. 3 (2026).
3. Colorado Attorney General, "Colorado Attorney General Phil Weiser Files Lawsuit to Block Proposed Kroger/Albertsons Merger" (Feb. 14, 2024).
4. U.S. Department of Justice, "Statement of the Department of Justice Antitrust Division on the Closing of Its Investigation of the Merger of Paramount Skydance and Warner Bros." (June 12, 2026); California Attorney General "Attorney General Bonta Files Lawsuit to Block $110 Billion Warner Bros./Paramount Merger" (July 13, 2026).
5. ORDER GRANTING MOTION FOR TEMPORARY RESTRAINING ORDER, California v. Paramount Skydance Corp., N.D. CA Case No. 26-cv-07116-AMO (July 20, 2026).
6. California DOJ, "Attorney General Bonta Welcomes New States and Files Amended Complaint in Nexstar/Tegna Challenge" (Apr. 30, 2026).

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In the past, state AGs have deferred to federal merger reviews but as these examples show, state theories of harm may differ from, or extend beyond, the federal agencies' typical review. Federal enforcers generally focus on product and geographic markets, competitive effects, entry, efficiencies, and remedies. States analyze those issues, but often through a more local lens: effects on state residents, local labor markets, local suppliers, patient access, grocery affordability, creative-industry workers, rural communities or a state's tax base, and economic identity. The facts that capture a regulator's attention in California may not be the same facts that draw focus in Washington, Oregon, New York, or Colorado. This activity is not limited to a handful of individual AG offices. The National Association of Attorneys General (NAAG) Multistate Antitrust Task Force provides an established vehicle for antitrust attorneys in AG offices across the country to coordinate multistate enforcement. Live Nation/Ticketmaster illustrates the point: 40 attorneys general joined DOJ in challenging alleged monopolization across the live-concert ecosystem; a coalition of 33 of those states took the case to verdict after the DOJ settled.

The strategic consequences are significant.

First, transaction planning should include a state-by-state antitrust and regulatory map at an early stage, not after signing. Counsel should identify state notification obligations, political sensitivities, industry-specific regimes, likely interested AGs, and whether local employees, facilities, customers, or suppliers create state-level advocacy risk. The map should also account for reciprocity provisions that may allow an "HSR filing received by one AG to be shared with another adopting state.[7]

Second, parties should not assume that advocacy to DOJ or the FTC will reach, persuade or satisfy the states. State enforcers have been explicit that they view themselves as independent antitrust authorities. The chief of the D.C. Attorney General's Office recently explained that states have long considered themselves antitrust enforcers and will continue enforcing even if federal priorities change. The practical takeaway is that merging parties should direct advocacy to state AGs directly, rather than treating them as passive participants in a federal process.

Third, advocacy should be tailored. A federal white paper may not answer a state AG's questions. In a healthcare deal, counsel should be prepared to address patient access, cost trends, service-line commitments, and community benefits. In grocery, pharmacy, or hospital deals, localized diversion evidence and local purchasing and supply considerations may be decisive.

Finally, deal documents and timelines should reflect state risk. Outside dates, cooperation covenants, divestiture obligations, litigation commitments, and public-affairs plans should account for state proceedings and state-specific remedies. Definitions of "Antitrust Authority" and "Antitrust Law" should be broad enough to capture state AGs, sector regulators and state merger statutes, and cooperation and control-of-defense clauses should address parallel or successive state processes, not just a federal Second Request. In some sectors, particularly healthcare, separate state notice or approval regimes may create timing and substantive risks even where federal review may be limited. The volume is no longer trivial: Oregon's Health Care Market Oversight program received 22 material-change notices in 2025, up from 15 in 2024 and 10 in 2023.[8]

Not every transaction will face state concern. But a number of state AGs have made clear that they intend to have a seat at the table when a merger implicates local issues. Parties that plan to engage with the states early will be better positioned to control timing, messaging, and remedies.

7. Wash. Rev. Code § 19.420.040.
8. Oregon Health Authority, 2025 Health Care Market Oversight Annual Report 8 (2026).

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The Blurbs

SPACs, TRAs, and Restructuring: Resolving Tax Receivable Agreement Obligations Through Chapter 11

Special purpose acquisition company (SPAC) activity is experiencing a revival, and with it, more public companies are expected to have legacy sponsor economics, Umbrella Partnership Corporation (Up-C) governance tensions, and, in some cases, tax receivable agreement (TRA) obligations that become restructuring issues if performance later deteriorates. While those challenges can impede out-of-court transactions, chapter 11 bankruptcy provides a framework to close control transactions free of those concerns.

A SPAC, particularly popular in the early 2020s, is an entity formed for the sole purpose of acquiring another company. SPACs are formed by a sponsor that invests the initial capital, after which the SPAC is listed publicly to raise the remainder of the capital, with the sponsor usually retaining a significant minority stake.

If a SPAC seeks to acquire a target taxed as a passthrough for U.S. tax purposes, it may utilize an Up-C structure. Generally, Up-C structures allow investors of the acquired company to preserve many of the tax benefits of holding an investment in passthrough form. In an Up-C de-SPAC,[1] a holding company is formed above the passthrough target entity and merged with the SPAC. The target's investors take a special class of shares in the post-merger public holding company (PubCo) that is entitled to a majority of voting rights but no economic rights, and also retain interests in the passthrough entity; public SPAC investors receive shares that carry economic rights, but fewer voting rights.

As previously discussed in the [Spring 2024] and [Summer 2024] issues of *MarketCheck*, an Up-C typically involves a TRA requiring PubCo to pay the target's investors a percentage (often 85%) of any tax benefits resulting from the basis step-up in the Up-C. Generally, payouts under a TRA will occur during the 16 years following the de-SPAC merger. However, most TRAs accelerate these payments if certain events occur. These events include a sale of substantially all of PubCo's assets, a merger or other transaction that results in a 50% change in the ownership of PubCo, or the liquidation or dissolution of PubCo. This can be a significant lump sum to be paid out, as the accelerated payments generally are calculated assuming that PubCo has sufficient taxable income to fully utilize all of the tax benefits covered by the TRA, an approach that is particularly favorable for the target's investors. As a result of the TRA, shareholders who were originally target investors—and who tend to have significant voting power—may favor transactions that preserve or accelerate their rights under the TRA.

A recent example is NuScale, which became public through a 2022 de-SPAC merger with Spring Valley Acquisition Corp., and disclosed in its 2025 Form 10-K that were a control transaction to occur, an early termination payment under its TRA could be approximately $365 million as of December 31, 2025.

A financially distressed PubCo is unlikely to have sufficient taxable income to utilize the tax benefits for which it is paying under the TRA, and likely has net operating losses (NOLs) or other tax attributes, that it is already unable to use to shield its taxable income. Economically, the TRA can operate like a contingent change-of-control liability payable to legacy target holders at the same time other stakeholders seek to reduce claims. Thus, the acceleration payment assumptions can balloon the TRA obligations well beyond what the

1. A "de-SPAC" is the transaction in which the public SPAC merges with a private target, where the private company survives the merger as the (now public) entity.DGCL § 303.

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PubCo would actually realize in tax benefits. In a standard M&A transaction, the prospect of accelerating payments under a TRA can have a chilling effect on any potential transaction or result in significant negotiation over the amount of the payout. Similarly, distressed companies often restructure out of court through debt-for-equity swaps that are likely to trigger change-of-control provisions and, accordingly, TRA payments. Shareholders who were originally target investors may refuse to waive their TRA payments and therefore hold up an out-of-court restructuring. But a chapter 11 bankruptcy filing can be approved by a board of directors. And once in chapter 11, PubCo can sell assets—including equity of the passthrough entity owned by PubCo—without shareholder consent and without being required to pay amounts owed under the TRA.

Delaware law generally permits Delaware corporations to carry out actions authorized by Bankruptcy Court orders without further action by its directors or shareholders.[2] Claims under a TRA generally are unsecured contract claims. The Bankruptcy Code's claims waterfall puts general unsecured claims higher in priority than equity but below administrative expenses of running the case (including so-called DIP financing), secured claims, and priority unsecured claims, suggesting that TRA claims against a financially distressed company are unlikely to be paid 100% in bankruptcy. Moreover, the Bankruptcy Code generally permits confirmation of a plan of reorganization that compromises a creditor's claim without its consent so long as (i) the creditor receives at least as much as it would in a chapter 7 bankruptcy liquidation, (ii) no junior class of creditors or equityholders receives any distribution, and (iii) no senior creditor is receiving more than 100% of the amount of its claims.[3] Accordingly, once in bankruptcy, so long as the proposed sale maximizes the value of the company, the TRA should no longer present a hurdle to closing.

To be sure, not all buyers would be interested in implementing an M&A deal through a bankruptcy filing, and public companies may be most averse to doing so. Bankruptcies are public, sometimes painful, and often expensive. They do, however, enable companies to shed liabilities and to deliver assets free and clear of virtually all pre-bankruptcy obligations. If accelerated TRA payments are great enough, the cost of a bankruptcy filing may be well worth it to a buyer.

Fundamentally, a TRA can create differing, and potentially competing, interests between SPAC-target investors and other stakeholders in the de-SPAC PubCo. This holds true in situations where the company is doing well, but also when the company is distressed. As a result, implementing a sale through a chapter 11 bankruptcy may be the best option available when the company in question has a TRA in place.

2. DGCL § 303.
3. 11 U.S.C. § 1129(a)(7), (b).

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Delaware Court of Chancery Applies Heightened Director Independence Presumption

In *Ayers v. Foley*,[1] the Delaware Court of Chancery addressed, for the first time, the heightened presumption of director disinterestedness codified in amended § 144(d)(2) of the Delaware General Corporation Law (DGCL).[2] The derivative action challenged two categories of compensation decisions by the board of Fidelity National Financial, Inc.: a $50 million equity grant to the company's founder and non-executive chairman, William P. Foley, and compensation awarded to the company's non-employee directors.

The court held that § 144(d)(2)'s heightened presumption is not confined to the statutory safe harbors in § 144 but also applies in the demand futility context under Rule 23.1. For directors of listed companies who have been determined to satisfy applicable stock exchange independence standards, the presumption may be rebutted only with "substantial and particularized facts" showing a material interest in the challenged act or transaction or a material relationship with an interested person. The court interpreted "substantial" in a qualitative sense, requiring specific, non-conclusory facts of sufficient significance to support a reasonable inference that the alleged interest or relationship would impair the director's objective judgment.

Applying that standard, the court dismissed claims relating to Foley's equity grant for failure to plead demand futility. The court treated the Foley grant and the non-employee director compensation as separate transactions, emphasizing that the equity grant was reviewed through a distinct process involving Fidelity's compensation committee and its related person transaction committee. Allegations of overlapping board service, business ties, and minority co-investments with Foley—including interests in professional sports teams—were insufficient to rebut the heightened statutory presumption absent particularized allegations showing that those relationships made the directors beholden to Foley or otherwise created a disabling bias, even though co-ownership of a professional sports team had previously been found by the court, in a 2018 decision,[3] to support an allegation of demand futility. The court also rejected allegations based on the directors' receipt of fees from service on boards of other Foley affiliates, noting that the plaintiff had not pleaded particularized facts showing that the fees were personally material to the directors.

The court reached a different result as to the directors' self-compensation. Because the compensation committee members were approving their own compensation, § 144(a)(1)'s disinterested-director safe harbor was unavailable, and the court concluded that the plaintiff had adequately pleaded a claim subject to entire fairness review. The fiduciary duty claim survived against the committee members who approved the challenged compensation, but not against directors who merely received the awards without participating in the approval process. The related unjust enrichment claim survived against all directors who retained the challenged compensation.

1. C.A. No. 2025-0650-LWW (Del. Ch. June 15, 2026).
2. The amendments were enacted with the passage of Delaware's Senate Bill 21 (S.B. 21) on March 25, 2025, and apply to cases filed after February 17, 2025. For more information on S.B. 21 and the resulting amendments to the DGCL, *see* this Debevoise Update.
3. *Cumming v. Edens*, C.A. No. 13007-VCS (Del. Ch. Feb. 20, 2018).

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Industry Updates

Private Credit, Insurers, and the Expanding Regulatory Agenda

For publicly traded insurers, private credit is no longer solely the purview of the investment function. While regulators recognize the business imperative behind investing in private credit, and, to date, regulatory developments in this area reflect a nuanced approach rather than a broad prohibition on private credit investments, regulatory focus on private credit is sharpening. As a result, private credit is increasingly becoming a governance and disclosure topic for boards navigating heightened regulatory oversight in the area.

On May 7, 2026, representatives from the National Association of Insurance Commissioners (NAIC) met with U.S. Treasury Secretary Scott Bessent to discuss state insurance regulatory perspectives on recent developments in private credit markets. Twenty state insurance regulators attended the one-hour meeting, during which several of those regulators described NAIC initiatives involving private credit to Secretary Bessent. Following the meeting, the U.S. Department of the Treasury confirmed that it is continuing to monitor the intersection of insurance and private credit, a topic also addressed in its Federal Insurance Office's most recent annual report published in September 2025. In a post-meeting statement, Secretary Bessent emphasized the Trump administration's support for state-based regulation and supervision of insurers, suggesting the federal government is not inclined to take action beyond engaging with the NAIC to understand state regulatory oversight in this area, at least for now.

For its part, the NAIC is focused on right-sized regulation that is fit for purpose and encourages innovation while appropriately protecting policyholders. Insurers have been investing in private assets for decades. Private credit offered higher yields by providing advantageous illiquidity premiums in the prolonged low-interest-rate environment that followed the financial crisis, enabling insurance companies to continue to support new underwriting and meet the needs of the insurance-buying public. State insurance regulators have generally attempted to take a targeted approach rather than treating private credit as inherently inappropriate for insurance company investment portfolios. The NAIC's workstreams on the subject have focused on addressing concerns about complexity, illiquidity, and transparency to ensure that private credit

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assets are properly classified, valued, rated, and reported, with capital charges that provide a reasonable assessment of the underlying investment risk of the asset. These initiatives include projects to classify assets based on the substance of the investment rather than form and more granularity in the risk-based capital factors for certain assets classes. Considering the increased use of private letter ratings, the NAIC has also proposed a due diligence framework to provide oversight for the NAIC's reliance on rating agency opinions, including potential rating agency de-admittance in cases of persistent inconsistencies in rating methodologies or outcomes. It has also implemented a process for the NAIC's Securities Valuation Office to challenge and override NAIC designations derived from rating agency ratings, although no such challenges have yet been publicized.

Given the regulatory developments on capital charges, enhanced financial reporting and transparency, ratings documentation, and review of complex or affiliated structures, insurers that can demonstrate disciplined oversight and robust documentation of investments in private assets will be better positioned to respond to questions from regulators and other constituencies. Governance processes to ensure appropriate risk management by the board as well as disclosure about private credit holdings, liquidity and ratings are of utmost importance as insurance companies face scrutiny on private credit. Companies should also consider developing contingency plans for changes in capital charges or ratings that adversely impact or require more capital to support assets on their balance sheets, particularly where assets may be difficult to sell or could create liquidity or capital strain.

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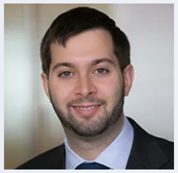

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California's Office of Health Care Affordability Moves to Strengthen Oversight of Financial Investments in Health Care

Over the past year, the California Office of Health Care Affordability (OHCA) has developed a regulatory framework that meaningfully widens its oversight of health care transactions involving private equity (PE) groups, hedge funds, and management services organizations (MSOs).[1] The first step came with Assembly Bill 1415 (AB 1415), which took effect on January 1, 2026, and which created an expanded pre-transaction review regime. AB 1415 left many operational mechanics to the discretion of OHCA,[2] which now seeks to expand further its oversight authority through proposed emergency regulations released on May 15, 2026 (the Proposed Regulations). While the Proposed Regulations fill some gaps, they also introduce a new layer of compliance obligations for parties to navigate.

Defining Materiality for Reportable Transactions

AB 1415 requires the reporting of transactions resulting in a "material change" of a health care entity[3] but does not quantify that materiality standard. Instead, determining whether a transaction is reportable under AB 1415 turns on whether the transaction involves the disposition of a "material amount" of assets or the transfer of control, responsibility, or governance over a "material amount" of assets or operations.[4] Since the statute does not clearly articulate what is considered a "material amount," AB 1415 leaves OHCA with considerable discretion in applying this materiality standard.

The proposed materiality triggers fall into two notable categories. The first is investment-based: a deal that leaves a PE group or hedge fund holding 5% or more of the assets, equity, debt, or liabilities of a health care entity or MSO is reportable.[5] A threshold of 5% is likely to capture transactions involving minority investments where the investor may not hold significant governance or voting rights in the target health care entity or MSO. While the 5% investment threshold is framed as an acquisition-side trigger, sell-side transactions are not necessarily outside the scope of AB 1415 or the Proposed Regulations. The statute separately requires a health care entity to notify OHCA of transactions that would result in the disposal of a material amount of its assets or the transfer of control over a material amount of its operations. For example, where a PE sponsor or hedge fund sells down a controlling stake in a health care entity, the health care entity itself may have an independent obligation to report the transaction as a material change to its business or governance.[6] In addition, where a PE group or hedge fund acquires the interest being sold, the buyer would independently trigger the 5% filing threshold if the acquisition results in its holding 5% or more of the health care entity's assets, equity, debt, or liabilities. Notably, under

1. The notice and review obligations under AB 1415 and the Proposed Regulations apply to transactions involving health care entities and MSOs with a sufficient nexus to California, which is generally measured by California-derived revenue, California assets, or the provision of health care services to California patients. *See* Cal. Code Regs. tit. 22, Section 97435(b)(1)–(3); Section 97435(c) of the Proposed Regulations (defining "annual California-derived revenue" as revenue from the provision of health care services in California).
2. For more information on AB 1415, please see our *Debevoise Debrief—Proposed Expansion of California Healthcare Transaction Oversight Takes Aim at Private Equity*.
3. Section 97431(g)(4) of the Proposed Regulations expands the definition of "health care entity" to mean "an entity that owns, operates, or controls a provider, regardless of whether the provider is currently operating, providing health care services, or has a pending or suspended license."
4. Cal. Health & Safety Code Section 127500.2(q) defines "material change" as "any change in ownership, operations, or governance for a health care entity, involving a material amount of assets of a health care entity." Cal. Health & Safety Code Section 127507(c)(1) requires a health care entity to provide OHCA written notice of agreements or transactions that would "sell, transfer, lease, exchange, option, encumber, convey, or otherwise dispose of a material amount of its assets" or "transfer control, responsibility, or governance of a material amount of the assets or operations of the health care entity."
5. Section 97435(c)(9) of the Proposed Regulations.
6. *See* Cal. Health & Safety Code Section 127507(c)(1).

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the Proposed Regulations, if multiple investors acquiring interests as part of a single transaction collectively meet this 5% threshold, the transaction would be required to be reported to OHCA, regardless of whether those investors are acting in concert.

The second category is service- and governance-based, primarily implicating MSO arrangements. A reportable transaction arises when: (i) an MSO begins providing management services to a health care entity meeting the $25 million revenue threshold; (ii) an MSO serves two or more providers that together generate at least $10 million annually from patients; or (iii) 25% or more of an MSO's ownership or control is transferred.[7]

The Proposed Regulations also introduce new transactions subject to OHCA's advance notification and reporting requirements. For example, real estate transactions were not addressed in AB 1415, but under the Proposed Regulations, sale-leaseback transactions are included as an independent reportable category.[8]

Finally, the Proposed Regulations further expand the realm of "reportable transactions" by permitting the aggregation of serial acquisitions involving the same or affiliated MSOs. AB 1415 provides that certain related transactions involving health care entities and their affiliates are considered a single transaction if they occur over a 10-year period. The Proposed Regulations bring MSOs and their affiliates into this existing 10-year aggregation trigger. Accordingly, PE-backed entities that seek to expand their platforms through a series of acquisitions of the same or affiliated MSOs should be aware that such transactions may be evaluated as a single transaction for purposes of meeting the reporting threshold.[9]

Additional Disclosure Obligations for "Noticing Entities"

AB 1415 introduced the concept of "noticing entities" for the purpose of determining which entities are required to report transactions resulting in a "material change" of a health care entity.[10] Noticing entities include PE groups, hedge funds, newly created entities formed for the purpose of transacting with a health care entity, and entities that own, operate, or control a health care provider. By expressly including newly formed entities, AB 1415 prevents parties from avoiding the notice requirement by using a newly formed holding company or other acquisition vehicle to complete the transaction. The Proposed Regulations further implement that framework by specifying the timing and content of notices required from noticing entities.

The Proposed Regulations would significantly expand filing and disclosure burdens on noticing entities. Under AB 1415, notice filings require basic transactional information, including identification of the parties, a description of the transaction, and any anticipated effects of the transaction on health care services. For PE groups and hedge funds, disclosure obligations reach well beyond the target itself and into the fund's broader platform. For example, PE groups

7. Section 97435(c)(10) of the Proposed Regulations.
8. Section 97435(c)(11) of the Proposed Regulations.
9. Section 97435(c)(8) of the Proposed Regulations provides that transactions that are part of a series of related transactions for the same or related health care services occurring over the past 10 years involving the same or affiliated health care entities, management services organizations, or entities affiliated with the same entities may be treated as a "material change" transaction.
10. AB 1415 amended Cal. Health & Safety Code Section 127507 to add notice obligations for "noticing entities" and MSOs. Section 127507(c)(2)(A) requires a noticing entity to provide OHCA with written notice of transactions between the noticing entity and a health care entity or MSO (or an entity that owns or controls such health care entity or MSO) involving the disposition of a material amount of assets or the transfer of control, responsibility, or governance over a material amount of assets or operations. Section 127507(c)(2)(B) separately requires an MSO to provide notice of analogous transactions between the MSO and any other entity. OHCA guidance states that, pending implementing regulations, noticing entities must provide at least "written notice" under Section 127507(c)(2)(A), and OHCA's MCN portal states that noticing entities must provide 90-day advance notice for material change transactions closing on or after April 2, 2026. *See* AB 1415 Frequently Asked Questions, California Department of Health Care Access and Information.

Continued on next page

and hedge funds would be required to identify by name every health care entity and MSO held across all funds managed by their participating asset managers. In doing so, PE groups and hedge funds must map out the full ownership and control of their organizations, identifying each affiliate, all 5% (or greater) interest holders (including intermediate entities), and any post-closing changes to voting rights, governance, or management structures.[11] At a 5% ownership threshold, minority investments may be pulled into the notice filing. Because OHCA treats notice materials as public records and posts public notice materials on its website, subject to statutory, regulatory, and approved confidentiality protections, the breadth of these disclosures may heighten confidentiality and competition concerns for large PE groups or hedge funds with multiple health care holdings across their fund complex, even where such holdings are unrelated to the transaction at hand.

In addition to the significant disclosure of ownership information relating to a PE group or hedge fund (and its applicable affiliates), the Proposed Regulations would require noticing entities to submit certified financial statements for the prior three fiscal years, not only for the transacting parties, but also for all entities and persons holding 5% or more of the transacting entity and its subsidiaries.[12] Such disclosure obligations go beyond what is currently required under AB 1415. Importantly, these expanded disclosure obligations are triggered only upon the occurrence of a reportable transaction. Existing portfolio holdings of PE groups and hedge funds are not independently subject to new notice requirements under the Proposed Regulations in the absence of a new transaction.

Looking Ahead

Following the release of the Proposed Regulations, OHCA accepted informal public comments through June 11, 2026. Several industry groups and organizations submitted public comments and took issue with the expansiveness of the Proposed Regulations and the disproportionate disclosure burdens they seek to impose on PE groups and hedge funds. OHCA discussed the comments received at its Board meeting on June 24, 2026. OHCA is expected to submit the proposed regulations to the Office of Administrative Law in July 2026, with a formal five-day public comment period prior to the regulations taking effect, which is anticipated to occur in August 2026. Whether and to what extent OHCA will revise the Proposed Regulations in response to those comments remains to be seen. In the meantime, PE groups, hedge funds, and other stakeholders contemplating investments in California health care entities should be prepared for the possibility of substantial disclosure obligations if the regulations are adopted in their current form.

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11. *See* Section 97438(b)(1)(D)(iv) of the Proposed Regulations, which requires notice filings to include the "names of health care entities or management services organizations owned or financed by the participating asset managers and funds they manage." The Proposed Regulations generally treat private equity groups and hedge funds alike for purposes of these notice and disclosure obligations. Furthermore, as the term "affiliate" is used in the Proposed Regulations, all entities that control, are controlled by, or are under common control with the noticing entity would be captured by the disclosure obligations.
12. Section 97438(c)(10) of the Proposed Regulations require that, upon a "material change" transaction, a noticing entity must include in its advance notification filing "certified financial statements for the prior three years...of all entities that are parties to the transaction, including the entities described in subsection (b)(10)(A)(i) and (ii) of this section." This requirement captures all entities and persons with 5% or more ownership of the transacting entity, as well as subsidiaries of the transacting entity (regardless of whether such entity is related to the health care transaction).

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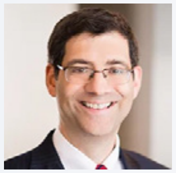

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Comparison of Certain Delaware, Nevada, and Texas Laws and Other Factors Relating to Corporate Governance and Takeovers

Subject	Delaware	Nevada	Texas
Duties of Directors – General	Fiduciary duties are not codified in the Delaware General Corporation Law (DGCL). Delaware case law provides that directors owe a duty of care and a duty of loyalty.	Fiduciary duties are prescribed by the Nevada Revised Statutes (NRS). Directors owe a duty to exercise their respective powers in good faith and with a view to the interests of the corporation.	Fiduciary duties are not comprehensively codified in the Texas Business Organizations Code (TBOC). Texas case law provides that directors a duty of care and a duty of loyalty. Directors also owe a duty of obedience, meaning that they are prohibited from taking action outside the scope of authority granted by the corporation's governing documents or Texas law. *Gearhart Indus., Inc. v. Smith Int'l, Inc.*, 741 F.2d 707 (5th Cir. 1984) (*Gearhart*).
Consideration of Interests When Exercising Fiduciary Duties	The interests of the stockholders are paramount. Directors may consider interests of other constituencies (as long as they are rationally related to stockholder interests), except when selling control.	Directors may consider all relevant facts, circumstances, contingencies, or constituencies, including interests of the corporation's employees, suppliers, creditors, or customers; state and national interests; societal interests; and long- and short-term interests of the corporation and its stockholders. NRS § 78.138.	Directors may consider the long-term and short-term interests of the corporation and its shareholders and any social purposes specified in the corporation's certificate of formation; if such a social purpose is not specified, officers and directors are not prohibited from considering, approving or taking an action that promotes or has the effect of promoting a social, charitable, or environmental purpose. TBOC § 21.401.
Exculpation of Officers and Directors	Charter can eliminate personal liability of directors and officers[1] to the corporation or its stockholders for breach of the duty of care but cannot limit liability for breach of duty of loyalty, acts or omissions in bad faith, unlawful payment of dividend or unlawful stock purchase or redemption, or an improper personal benefit. DGCL § 102(b)(7).[2]	Does not require the adoption of particular provisions in the articles of incorporation. Under NRS § 78.138, a director or officer is not individually liable for damages as a result of an act or failure to act in his or her capacity as a director or officer unless (i) the statutory presumption that the director or officer acted in good faith, on an informed basis, and with a view to the interests of the corporation is rebutted; and (ii) the breach of fiduciary duty involved intentional misconduct, fraud, or a knowing violation of law.	The certificate of formation can eliminate personal liability of directors and officers[3] for money damages owed to the corporation or its shareholders for breach of the duty of care but cannot limit liability for breaches of the duty of loyalty, acts or omissions taken in bad faith, receipt of an improper benefit, or acts or omissions for which liability is established by statute. TBOC § 7.001.

1. The DGCL was amended in 2022 to include an officer exculpation provision similar to the one that was previously afforded only to directors.
2. Note that DGCL § 102(b)(7) does not protect officers from liability for claims brought by, or in the right of, the corporation.
3. Senate Bill 2411 (SB 2411), which became effective on September 1, 2025, amended TBOC § 7.001 to permit officer exculpation to the same extent as director exculpation, if adopted in the certificate of formation.

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Comparison of Certain Delaware, Nevada, and Texas Laws and Other Factors Relating to Corporate Governance and Takeovers

Subject	Delaware	Nevada	Texas
Business Judgment Rule	Presumes that in making a business decision the directors acted on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the company. *Aronson v. Lewis*, 473 A.2d 805 (Del. 1984).	Codified by statute. Directors "in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." NRS § 78.138(3).	Codified by statute for publicly traded corporations and other Texas corporations that affirmatively opt into the statutory framework (covered corporations). Directors and officers of covered corporations are presumed to act in good faith, on an informed basis, in furtherance of the corporation's interests, and in obedience to the law and the corporation's governing documents. TBOC § 21.419(c).
Other Standards of Review	In certain circumstances, typically relating to takeovers, director decisions may be subject to enhanced scrutiny. DGCL § 144 provides statutory safe harbors for interested director/officer transactions and controlling stockholder transactions. If the applicable statutory safe harbor is satisfied, the transaction receives business judgment review. If the safe harbor is not satisfied, the statute does not establish a standard of review, and the applicable standard will be determined under otherwise applicable Delaware law. For conflicted transactions, that may mean entire fairness absent a common-law cleansing mechanism. For more information on the relevant safe harbor requirements, see "Interested Director/Officer Transactions" and "Review of Conflicted Controller Transactions" below.	The business judgment rule is the presumed standard of review in all cases, except for actions taken to impede a stockholder's right to vote for or remove directors in connection with a change or potential change in control of a corporation. NRS § 78.139. For such cases, directors must have "reasonable grounds to believe that a threat to corporate policy and effectiveness exists," and the challenged action must be reasonable in relation to that threat. In 2021, the Nevada Supreme Court explicitly rejected the notion of an inherent fairness standard similar to the one applied by Delaware in conflicted transactions. *Guzman v. Johnson*, 483 P.3d 531 (Nev. 2021).	No heightened standards similar to Delaware's enhanced scrutiny or entire fairness. Texas has a statutory management-protective framework for covered corporations rather than Delaware-style enhanced scrutiny or entire fairness. TBOC § 1.057 provides that the Texas corporate statute's plain meaning may not be supplanted, contravened, or modified by other states' law or judicial decisions. Managerial officials of Texas corporations may consider other jurisdictions' laws, decisions, and practices, but failure to consider or conform to them does not constitute or imply a breach of Texas law.

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Comparison of Certain Delaware, Nevada, and Texas Laws and Other Factors Relating to Corporate Governance and Takeovers

Subject	Delaware	Nevada	Texas
Board Duties in Adopting Anti-Takeover Defensive Measures, Including Poison Pills	*Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985) (*Unocal*) requires enhanced scrutiny of board decisions to defend against a takeover, meaning that: • the board must show it has reasonable grounds for believing that a threat to corporate policy and effectiveness existed; and • the action taken must be reasonable in relation to the threat posed. An action is reasonable if it is neither coercive nor preclusive and falls within a range of reasonableness. *Unitrin, Inc. v. American General Corp.*, 651 A.2d 1361 (Del. 1995).	Not specifically addressed by state case law. However, NRS § 78.139 establishes a statutory standard for actions taken to resist a change or potential change in control that impede stockholders' right to vote for or remove directors. *See* "Interference with Stockholder Voting" below.	Not specifically addressed by state case law. In a federal case, applying Texas law, the court found that directors did not breach their fiduciary duties by issuing equity in response to a hostile takeover because (i) the actions, as they relate to the duty of care, were protected by the business judgment rule, and (ii) the directors proved that the issuance was fair to the corporation (satisfying the duty of loyalty). *Gearhart*.
Poison Pills	The board may approve issuances of rights. DGCL § 157. Case law upholds rights plans with provisions that invalidate rights held by certain shareholders. *Household Int'l, Inc.*, 500 A.2d 1346 (Del. 1985). However, poison pills with extreme features ("dead hand"/"slow hand" pills and, in at least one case, a 5% trigger coupled with broad "acting in concert" provision) have been ruled invalid under *Unocal. Carmody v. Toll Bros.*, 723 A.2d 1180 (Del. Ch. 1998); *Quickturn Design Sys., Inc. v. Mentor Graphics Corp.*, 721 A.2d 1281 (Del. 1998); *Williams Cos. S'holder Litig.*, 2021 WL 754593 (Del. Ch. Feb. 26, 2021), aff'd, 264 A.3d 641 (Del. 2021).	Expressly permits the implementation of poison pill defensive measures. NRS § 78.195(5); NRS § 78.200.	Texas case law on poison pills is limited, but at least one federal court applying Texas law declined to enjoin a poison pill where the board's adoption of the pill satisfied applicable fiduciary-duty principles. The district court cited *Gearhart* to show that the action was fair and also cited Delaware case law. *A. Copeland Enters., Inc. v. Guste*, 706 F. Supp. 1283 (W.D. Tex. 1989).

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Comparison of Certain Delaware, Nevada, and Texas Laws and Other Factors Relating to Corporate Governance and Takeovers

Subject	Delaware	Nevada	Texas
Board Duties on Change of Control	Directors have duty to seek the best price reasonably available. *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986) (*Revlon*); *Paramount Commc'ns Inc. v. Time Inc.*, 1989 WL 79880 (Del. Ch. July 14, 1989), *aff'd*, 571 A.2d 1140 (Del. 1990) (*Paramount*).	No *Revlon*-style duties. Directors and officers generally retain the NRS § 78.138 business judgment presumption when confronted with a change or potential change in control. However, under NRS § 78.139, if directors or officers take action to resist a change or potential change in control that impedes stockholders' right to vote for or remove directors, directors must have reasonable grounds to believe that a threat to corporate policy and effectiveness exists, and the action taken must be reasonable in relation to that threat.	Some federal courts applying Texas law have previously looked to Delaware change-of-control decisions, including *Revlon* and *Paramount*, for guidance. *A. Copeland Enters., Inc. v. Guste*, 706 F. Supp. 1283 (W.D. Tex. 1989); *Heller v. Am. Indus. Props. Reit*, 1998 WL 1782550 (W.D. Tex. Sept. 28, 1998). However, TBOC § 1.057 provides that the plain meaning of the TBOC may not be supplanted, contravened, or modified by other states' laws or judicial decisions, while permitting managerial officials to consider other states' laws, decisions, and practices.
Interference with Stockholder Voting	Board action that interferes with the shareholder franchise is subject to review under *Unocal* (the directors must show that they had reasonable grounds for believing that a threat existed and that the action was reasonable in light of the threat posed), with special sensitivity given the central importance of the franchise.[4]	If directors take action to resist a change or potential change in control of a corporation, which action impedes the exercise of the right of stockholders to vote for or remove directors: (i) the directors must have reasonable grounds to believe that a threat to corporate policy and effectiveness exists; and (ii) the action taken that impedes the exercise of the stockholders' rights must be reasonable in relation to that threat. NRS § 78.139.	No specific case law regarding special duties or heightened standards of review in this instance.

4. In 2023, in Coster v. UIP Cos., Inc., 300 A.3d 656 (Del. 2023), the Delaware Supreme Court clarified that the test under Blasius Industries, Inc. v. Atlas Corp., 564 A.2d 651 (Del. Ch. 1988), which required boards to demonstrate a "compelling justification" for actions primarily intended to interfere with stockholder voting in election contests, was properly subsumed within an analysis under Unocal, which evaluates whether the board reasonably perceived a threat and whether the response was reasonable in relation to that threat. For more on that decision, see this Debevoise Debrief.

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Comparison of Certain Delaware, Nevada, and Texas Laws and Other Factors Relating to Corporate Governance and Takeovers

Subject	Delaware	Nevada	Texas
Interested Director/ Officer Transactions	DGCL § 144 provides statutory safe harbors for certain acts or transactions involving interested or non-independent directors or officers. Under amended § 144(a), such an act or transaction is protected if it is either (i) approved or ratified by a majority of disinterested directors or (ii) approved or ratified by a majority of the votes cast by disinterested stockholders entitled to vote thereon, in each case after disclosure or with full knowledge of the material facts giving rise to the conflict or potential conflict. If the safe harbor is not satisfied, the statute does not establish a standard of review, and the applicable standard will be determined under otherwise applicable Delaware law. For conflicted transactions, that may mean entire fairness absent a common-law cleansing mechanism. DGCL § 144 also includes definitions and presumptions relevant to determining director independence and disinterestedness, including a heightened presumption tied to national securities exchange independence determinations.	A contract or transaction with an interested director or officer is not void or voidable merely because of that interest if any of the following apply: (i) the conflict of interest: • is known to the board of directors and the directors (other than any interested directors) approve or ratify the contract or transaction in good faith; or • is known to the stockholders, and stockholders holding a majority of the voting power, approve or ratify the transaction in good faith; the votes of the interested directors or officers must be counted in this vote of stockholders; (ii) the conflict of interest is not known to the applicable director or officer when the transaction is brought before the corporation's board of directors for action; or (iii) the transaction is fair to the corporation when it is authorized or approved. NRS § 78.140(2).	A contract or transaction with an interested director or officer is not automatically void if any one of the following conditions is satisfied: (i) the material facts as to the relationship or interest are disclosed to or known by: • the corporation's board of directors, and the board in good faith authorizes the contract or transaction by the approval of the majority of the disinterested directors, regardless of whether the disinterested directors constitute a quorum; or • the shareholders entitled to vote on the authorization of the contract or transaction, and the contract or transaction is specifically approved in good faith by a vote of the shareholders; or (ii) the contract or transaction is fair to the corporation when the contract or transaction is authorized, approved, or ratified by the board of directors, a committee of the board of directors, or the shareholders. Common or interested directors of a corporation may be included in determining the presence of a quorum at a meeting of the corporation's board of directors, or a committee of the board of directors, that authorizes the contract or transaction. TBOC § 21.418. A covered corporation is entitled to seek an advance judicial determination of the independence and disinterestedness of directors serving on a committee formed to review certain transactions involving the corporation or its subsidiaries and a director or officer. See "Review of Conflicted Controller Transactions" below.

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Comparison of Certain Delaware, Nevada, and Texas Laws and Other Factors Relating to Corporate Governance and Takeovers

Subject	Delaware	Nevada	Texas
Review of Conflicted Controller Transactions	Under DGCL § 144, a non-going-private controlling stockholder transaction is eligible for the statutory safe harbor if it is either (i) approved or recommended in good faith by the majority of the disinterested directors serving on a special committee or (ii) approved or ratified by a fully informed, uncoerced vote of a majority of the votes cast by disinterested stockholders. Controller going-private transactions qualify for the safe harbor when the transaction is *both* approved or recommended in good faith by the majority of the disinterested directors serving on a special committee *and* approved or ratified by a fully informed, uncoerced vote of a majority of the votes cast by disinterested stockholders. If the safe harbor is not satisfied, the statute does not establish a standard of review, and the applicable standard will be determined under otherwise applicable Delaware law. For conflicted transactions, that may mean entire fairness absent a common-law cleansing mechanism.	For controlling stockholder transactions, NRS § 78.240 creates a presumption that a controlling stockholder has not breached its limited fiduciary duty if the relevant contract or transaction is authorized or approved by either a committee consisting of only disinterested directors or by a board of directors in reliance on such a committee.	Some federal courts applying Texas law Boards of covered corporations may petition the Texas Business Court, or an appropriate district court, for a pre-transaction determination of the independence and disinterestedness of a committee reviewing transactions involving directors, officers, or controlling shareholders; the court's finding is "dispositive" absent certain later-presented facts. Absent a safe harbor, a fiduciary must show that "the transaction in question was fair and equitable" to the corporation. *Spethmann v. Anderson*, 171 S.W.3d 680 (Tex. App. 2005). At common law and under TBOC § 21.418, the burden is on the fiduciary to show that the transaction is fair. *In re Est. of Poe*, 648 S.W.3d 277 (Tex. 2022).
Existence of a Controller	For the purposes of Delaware's safe harbor, a stockholder holding less than one-third of the voting stock cannot be a controlling stockholder (unless that stockholder has a right to cause the election of directors having a majority of the voting power on the board). In addition, to be considered a controlling stockholder, a less-than-majority stockholder must have the "power functionally equivalent" to that	Nevada law defines a "controlling stockholder" as a "stockholder having the voting power, by virtue of the stockholder's relative beneficial ownership of shares or otherwise pursuant to the articles of incorporation, to elect at least a majority of the corporation's directors." NRS § 78.240(6)(d).	Texas law does not contain a statutory definition of "controlling shareholder" comparable to the definitions adopted in Delaware and Nevada. Texas case law has also not developed a Delaware-style controller doctrine for public corporations. Texas courts have, in certain closely held corporation cases, referred to majority shareholders or persons "in control"

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Comparison of Certain Delaware, Nevada, and Texas Laws and Other Factors Relating to Corporate Governance and Takeovers

Subject	Delaware	Nevada	Texas
Existence of a Controller (cont.)	of a majority stockholder and must have the "power to exercise managerial authority over the business" of the company. DGCL § 144(e). For purposes of the safe harbor, amendments to the DGCL eliminated the concept of "transactional control"—i.e., the concept that a stockholder not otherwise a controller could nevertheless be deemed a controller due to having significant influence with respect to the specific transaction being challenged.[5]		of a corporation, and some courts have considered whether majority shareholders in closely held corporations may owe fiduciary duties to minority shareholders based on the particular facts and relationships at issue. However, Texas has no bright-line ownership threshold for purposes of establishing the existence of a controller.
Duties of Controlling Stockholders	Controlling stockholders owe fiduciary duties to the corporation and its minority stockholders in certain circumstances, including when the controller transacts with the corporation or receives a non-ratable benefit in a transaction involving the corporation. When a controller exercises stockholder-level rights, such as voting power, to change the corporate status quo, the controller may owe more limited duties not to intentionally harm the corporation or its minority stockholders and not to act with gross negligence. *In re Sears Hometown & Outlet Stores, Inc. S'holder Litig.*, 309 A.3d 474 (Del. Ch. 2024).	Controlling stockholders have only a limited fiduciary duty not to exert undue influence over directors or officers with the purpose and proximate effect of inducing a fiduciary breach in connection with specified transactions involving the controlling stockholder or its affiliates or associates and resulting in a material, nonspeculative, and non-ratable financial benefit to the controlling stockholder and a material, nonspeculative detriment to the other stockholders generally.	Texas does not appear to have developed a Delaware-style controller fiduciary-duty doctrine for public corporations. Specifically, the Texas Supreme Court has stated that it has never recognized a formal fiduciary duty between majority and minority shareholders in a closely held corporation. *Ritchie v. Rupe*, 443 S.W.3d 856 (Tex. 2014).

5. Although amended DGCL § 144 excludes transaction-specific influence from the statutory definition of "controlling stockholder" for purposes of the safe harbor, the amendments do not expressly address whether, or how, Delaware courts may consider transaction-specific influence outside the statutory safe harbor analysis. Accordingly, the continued relevance of "transactional control" outside the scope of amended § 144 remains uncertain.

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Comparison of Certain Delaware, Nevada, and Texas Laws and Other Factors Relating to Corporate Governance and Takeovers

Subject	Delaware	Nevada	Texas
Courts and Case Law	Delaware courts are very experienced in adjudicating corporate law questions, and Delaware has a well-developed body of case law in the corporate governance and takeover areas. The Delaware Court of Chancery is a specialized court of equity and the forum for disputes involving the internal affairs of Delaware corporations and other business entities. The Chancellor and Vice Chancellors are appointed by the Governor and confirmed by the Delaware Senate for 12-year terms.	Nevada has limited Nevada-specific corporate case law, and there are few Nevada Supreme Court cases directly interpreting the statutes described above. Corporate and business disputes are currently heard in Nevada's district courts, where judges are elected. In 2025, Nevada approved AJR 8, a proposed constitutional amendment to create a dedicated business court with exclusive original jurisdiction over certain corporate and M&A disputes, including stockholder-rights and fiduciary-duty claims. The proposal still requires approval in the 2027 legislative session and by voter referendum, which could take place in November 2028.	The Texas Legislature created the Texas Business Court in 2023, and the court began hearing cases on September 1, 2024. The goal was to create a specialty court with experience in corporate and other business issues, including jurisdiction over a range of complex commercial disputes. Texas Business Court judges are appointed by the governor for two-year terms, subject to Senate confirmation.

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Below are links to articles and publications of interest.

SEC Issues New Beneficial Ownership and Other Guidance

Board Refreshment: More than a Compliance Exercise

SEC Exemptive Order Expands the Five-Business-Day Framework for Debt Tender and Exchange Offers

Corporate & Securities Laws Insights: Governance Considerations for Replacing External Auditors

Japan Expands Investment Screen Regime, Forms CFIUS-Like Investment Screening Panel

Record Fines of $12 Million for Avoiding HSR Filings

Navigating Your Strategic Relationship with an Insurance, from LOI to Effective Date

The Chaotic State of U.S. Merger Control

Executive Compensation Impacts of the SEC's Proposed Filer Status Framework

ESG and Fiduciary Duties for Asset Managers and Pension Fund Trustees

SEC Proposes to Rescind Climate Disclosure Rules

Going and Staying Public: SEC Proposes Simplified Disclosure for Most Public Companies

Make Registered Offerings Great Again: SEC Proposes Amendments

Breaking the Quarterly Cycle: SEC Proposes Optional Semiannual Reporting

Court Order Signals New Era for Shareholder Proposals Under Rule 14a-8

Crossword Puzzle

Across

3 Founder of Trian Partners

6 Company that redomesticated from DE to TX on July 1

8 SEC Chairman

10 Vote on remuneration of executives

Down

1 Ticker symbol of company with largest IPO ever

2 CEO of 1 Down

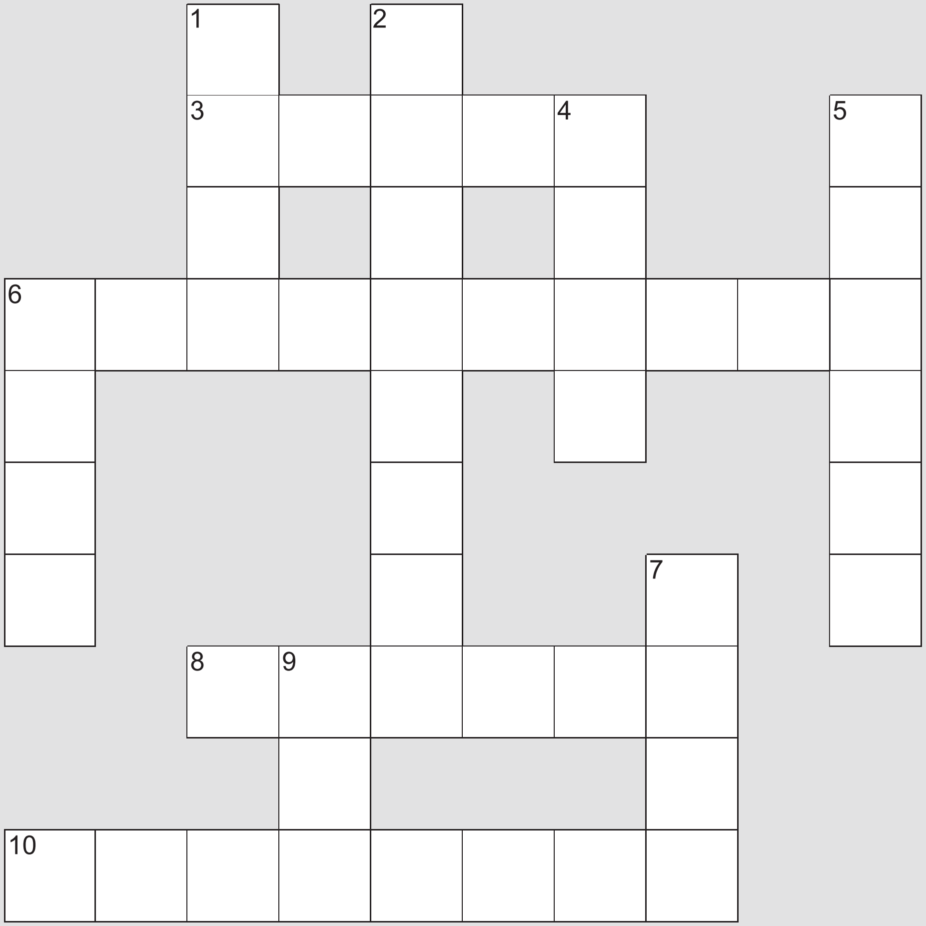
4 App for remotely communicating and collaborating

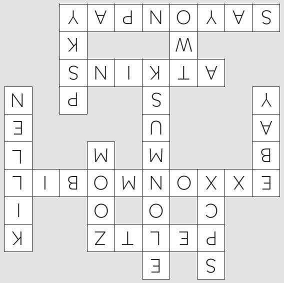
5 First Chancellor of the Delaware Court of Chancery

6 Target of takeover offer by GameStop

7 Ticker symbol for pending acquiror of WBD

9 Number of classes of common stock of 1 Down





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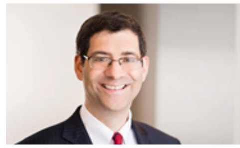

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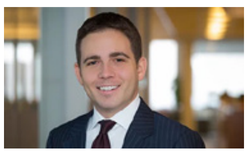

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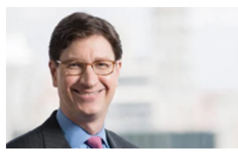

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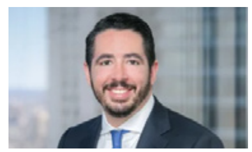

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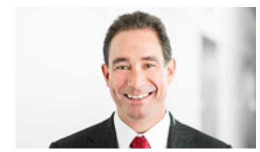

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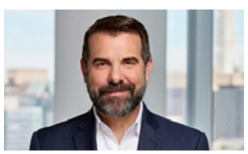

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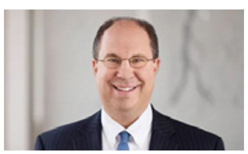

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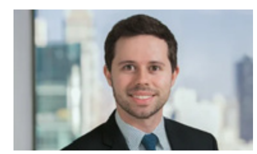

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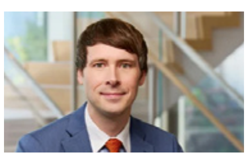

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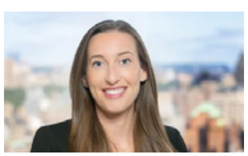

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