

Delaware Court Enjoins Cloudflare Recapitalization, Emphasizing Section 144 Good-Faith Requirement

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On October 16, 2026, in *In re Cloudflare, Inc. Stockholder Litigation*, the Delaware Court of Chancery preliminarily enjoined a recapitalization that would have allowed Cloudflare's founders to retain voting control while substantially reducing their economic ownership.¹ Vice Chancellor Laster concluded that the plaintiffs had shown a reasonable probability that Cloudflare's special committee had not approved the transaction in good faith, as required for safe harbor protection under amended Section 144 of the Delaware General Corporation Law (the "DGCL"). The court reached that conclusion even though the committee satisfied the statute's disinterestedness requirements and was unlikely to have acted with gross negligence.

The decision follows *Dodiya v. Franklin*, in which the Court of Chancery held in August that a plaintiff had adequately alleged gross negligence in a merger's approval by a board with a disinterested majority.² The two decisions address different aspects of the statutory safe harbor requirement that disinterested directors approve a transaction "in good faith and without gross negligence." They illustrate that compliance with Section 144's requirements for board or committee composition does not, by itself, establish entitlement to safe harbor protection. At the same time, the *Cloudflare* court resolved the disputed questions of statutory interpretation in the defendants' favor and left open the possibility that the defendants could establish the safe harbor's applicability at an expedited trial.

Background

Cloudflare's founders, Matthew Prince and Michelle Zatlyn, control the company through Class B shares carrying 10 votes per share. Their combined voting power declined from 60% in 2021 to 50.3% in June 2026 as a result of stock sales and company

¹ *In re Cloudflare, Inc. S'holder Litig.*, C.A. No. 2026-0772-JTL, slip op. (Del. Ch. Oct. 16, 2026) ([opinion](#)). The decision rests on a preliminary record and makes no findings of fact. Slip op. at 10.

² *Dodiya v. Franklin*, C.A. No. 2025-0932-LWW, slip op. at 1-2, 39 (Del. Ch. Aug. 26, 2026) ([opinion](#)). Our September 1, 2026, Update on *Dodiya* is available [on our website](#).

equity issuances. At historical rates, they were expected to lose majority voting control by December 2026.³

In October 2025, the board formed a three-member special governance committee to consider changes to Cloudflare's capital structure, determining that each member was independent of the company and its founders and disinterested in the potential alternatives. The committee retained its own legal counsel and financial adviser. Over a six-month process beginning in December 2025, the committee met 18 times, considered alternative capital structures and negotiated with the founders over their minimum retained investment, continued service and governance protections.⁴

The committee ultimately approved a recapitalization under which each Class B share would be exchanged for one Class A share and one share of preferred stock carrying nine votes. The company would also distribute a non-voting Class C share for each Class A share, allowing the founders to sell Class C shares without reducing their voting power. The preferred stock would be redeemed if the founders' Class A holdings fell below 40% of their post-exchange level. Because that test excluded Class C shares, the founders could reduce their economic interest to approximately 20% of its pre-recapitalization level while retaining control. The plaintiffs estimated that the recapitalization would permit approximately \$2.1 billion in additional sales before the founders lost control.⁵ The transaction received stockholder approval through the founders' majority voting power but was supported by less than 18% of the voting power held by other stockholders.⁶

The Court's Decision

Good Faith

The court found a reasonable probability that the committee had not approved the recapitalization in good faith. It questioned whether the committee had used its process to evaluate the transaction for the benefit of the company and its stockholders or instead sought to accommodate the founders' desire to retain control. The court assessed the formal record against contemporaneous notes and communications, as well as deposition testimony.⁷

³ Slip op. at 14–15.

⁴ Slip op. at 18, 21–22, 25–29.

⁵ Slip op. at 33–34, 44–50.

⁶ Slip op. at 50–52 & n.146.

⁷ Slip op. at 117–26.

The court focused in particular on how the committee and its advisors developed the rationale for the recapitalization. Early adviser notes referred to developing a narrative and identifying benefits for the founders. After the financial adviser reported no clear consensus that controlled companies perform better, the committee sought an outside expert whose involvement was described as creating “a good fact pattern.” The expert’s consulting partner indicated sympathy with the proposal before learning the company’s identity. The court viewed this sequence as supporting an inference that the committee was seeking to justify a preferred outcome, although the defendants disputed the accuracy of the adviser’s notes.⁸

The court also focused on the negotiations over the founders’ minimum retained investment. A committee member privately indicated to Prince that he expected the committee to accept the founders’ position. After Prince objected to the committee’s next proposal and threatened to resign, two directors who were not committee members joined a committee meeting. The final terms reflected the economic ownership floor close to the one Prince had previously anticipated. The parties disputed whether his communications had influenced the committee.⁹

The court’s credibility concerns were exacerbated by the defendants’ use of auto-deleting Signal messages. Surviving communications conflicted with testimony that no substantive matters had been discussed through those channels. The court inferred from the gaps in the record that the missing messages would have been adverse to the defendants.¹⁰

The court emphasized that it was not making a finding of bad faith. The committee members could testify credibly at trial and establish that they had acted in good faith. Indeed, the court indicated that, absent the credibility concerns raised by the record, it might have found the safe harbor sufficiently likely to apply to deny an injunction.¹¹

Preliminary Relief and Next Steps

The court also found a reasonable probability that the plaintiffs would prevail under the entire fairness standard if the safe harbor did not apply. It concluded that an injunction was appropriate because the recapitalization would be difficult to unwind once the new shares began trading, and the loss of voting rights would be difficult to remedy with damages. An injunction also would not jeopardize a third-party acquisition proposal.¹² The court offered the defendants the option of an expedited trial limited to the

⁸ Slip op. at 25–26 & n.63, 29–32.

⁹ Slip op. at 34–46.

¹⁰ Slip op. at 23–25, 123–25 & n.341.

¹¹ Slip op. at 6–8 & n.5, 126, 142.

¹² Slip op. at 54–59, 129–39.

applicability of the safe harbor, principally the good-faith requirement. A successful showing would avoid the need for an entire fairness trial.¹³

Other Section 144 Rulings

The court's other rulings favored the defendants. It held that the heightened presumption of director disinterestedness applies at trial, where a plaintiff must prove by clear and convincing evidence that the board's determination was unreasonable. The plaintiffs were unlikely to meet that standard based on a committee member's 16-year board tenure, ownership of \$40 million to \$50 million of company stock and attendance at Prince's wedding. The court also found that the committee's process, advisers and detailed record made a showing of gross negligence unlikely and that the absence of a fairness opinion did not change that conclusion.¹⁴

The court also rejected the argument that the recapitalization fell outside the safe harbor simply because it affected voting rights. It interpreted Section 144's injunctive-relief exception to preserve relief in circumstances traditionally subject to enhanced scrutiny.¹⁵

Practical Implications

Cloudflare illustrates how the good-faith inquiry can turn on the reasons for a committee's decisions and the credibility of its account, even where its members qualify as disinterested, and its process is unlikely to be found grossly negligent. Several aspects of the decision offer useful guidance for committees considering transactions with controlling stockholders:

- **The status quo as a reference point.** The court's analysis reinforces the relevance of available alternatives, including not proceeding, when assessing a transaction's benefits. In *Cloudflare*, the founders could have retained majority voting control until late 2028 by refraining from stock sales. The court also gave limited weight to the committee's extraction of contractual protections that merely reflected the founders' existing intentions or the company's existing practices.¹⁶
- **The committee's negotiating role.** The decision illustrates how threats by a controller, intervention by other directors and back-channel communications can affect the court's assessment of a committee's independent judgment. Clear

¹³ Slip op. at 139–41.

¹⁴ Slip op. at 127–28.

¹⁵ Slip op. at 71–87.

¹⁶ Slip op. at 15, 122–23.

expectations about communications and participation may help preserve the committee's ability to assess and negotiate the transaction on its own terms.

- **The treatment of outside advice.** A second opinion can help a committee test a proposal's merits, particularly where the initial advice is inconclusive. However, in *Cloudflare*, the court was concerned that the committee sought an expert to support continued founder control after its financial adviser reported no clear consensus that controlled companies perform better. The decision illustrates the risk that seeking additional advice can be viewed as justifying a preferred outcome.
- **The contemporaneous record.** The court's discussion of auto-deleting, encrypted messages highlights the importance of communication and preservation practices. Contemporaneous notes and messages can inform the court's assessment of a committee's good faith, and gaps in that record can complicate the committee's account, even where the formal minutes are detailed.

Both *Cloudflare* and *Dodiya* involved unusual facts, and neither establishes that ordinary process imperfections will defeat the safe harbor.¹⁷ The *Cloudflare* defendants may yet establish their entitlement to its protection at trial. The decision nevertheless underscores the value of a contemporaneous record explaining the committee's assessment and the reasons for its decisions, together with the committee members' ability to give a credible account of their work if the process is challenged.

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Please do not hesitate to contact us with any questions.



Susan Reagan Gittes
Partner, New York
+1 212 909 6759
srgittes@debevoise.com



Eric T. Juergens
Partner, New York
+1 212 909 6301
etjuergens@debevoise.com



Matthew E. Kaplan
Partner, New York
1 212 909 7334
mekaplan@debevoise.com

¹⁷ *Dodiya*, slip op. at 1 (describing an “extreme scenario”); *Cloudflare*, slip op. at 142 (referring to “unique facts”).



Jonathan E. Levitsky
Partner, New York
+1 212 909 6423
jelevitsky@debevoise.com



Gordon Moodie
Partner, New York
+1 212 909 6946
gsmoodie@debevoise.com



Maeve O'Connor
Partner, New York
+1 212 909 6315
mloconnor@debevoise.com



William D. Regner
Partner, New York
+1 212 909 6698
wdregner@debevoise.com