
Chancery Court Holds that a Board’s Refusal to “Approve” the Nomination of a Dissident Slate of Director Nominees for Purposes of Deactivating a Change of Control Put Provision is a Breach of Fiduciary Duty

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On March 8, 2013, the Delaware Chancery Court, in an unpublished opinion by Chancellor Strine, ruled that an issuer’s board of directors cannot withhold its “approval” of the nomination of a dissident slate for purposes of using covenants in New York law indentures to pressure stockholders to vote for the incumbent board in a proxy contest. The approval would enable the issuer to avoid triggering a put right at 101% of par with respect to the notes issued under the indentures.

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