

M&A Watch

Court Questions Accelerated Vesting of Equity Compensation 17 April 2017

As we have previously reported, the Delaware Chancery Court recently dismissed the stockholder class action suit *In re Columbia Pipeline Group, Inc. Stockholder Litigation*, C.A. No. 12152-VCL (Del. Ch. Mar. 7, 2017), reaffirming that a fully-informed vote of a company's disinterested stockholders will result in application of the business judgment rule. However, in a recently filed transcript of the proceedings, the Court made some noteworthy remarks regarding equity acceleration in the context of change of control transactions.

BACKGROUND

Plaintiff stockholders of Columbia Pipeline Group Inc. (the "Company") alleged that Company directors breached their duty of loyalty by engineering a spinoff and eventual sale of the Company as part of a self-interested plan to cash in on lucrative change of control benefits.

COURT COMMENTARY

In drawing an interesting parallel to investment bank contingency fees, Vice Chancellor Laster expressed the view that the vesting of equity arrangements upon a change of control can create a conflict of interest for directors and officers in considering whether to pursue a sale or remain a stand-alone company.

The Vice Chancellor sees this as a nuanced analysis of whether the awards in question would create an incentive to "sell now versus sell later". He points out that obtaining future compensation upon a change of control creates a potentially meaningful benefit to directors and officers, which they would not necessarily receive if the Company were not sold, and which stockholders are not receiving. He also believes that there is time value benefit to vesting, which should be considered.

In this case, the Court found that any such conflicts were cleansed by the fully informed vote of stockholders – the basic terms of the defendant directors’ change of control benefits had been disclosed prior to the vote approving the sale of the Company. The Vice Chancellor stressed that in providing such disclosure, Delaware law requires only the disclosure of material facts and does not require defendant directors to “engage in self-flagellation” or offer “legal conclusions.”

OUR VIEW

The Court’s commentary in this case reinforces the notion that boards should remain vigilant of potential conflicts of interest in the context of a change of control transaction. Boards should consider the specific facts and circumstances facing the Company at the time of a grant of equity awards, and should take any potential conflict into account before issuing the awards or accelerating vesting. In the event that such a conflict may potentially exist, the importance of obtaining fully informed stockholder approval of the transaction cannot be overstated.

We welcome the opportunity to discuss this topic with you directly and look forward to hearing your thoughts.



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