Debevoise & Plimpton

July 2024
Issue 8

SPECIAL COMMITTEE REPORT

This issue of the *Debevoise & Plimpton Special Committee Report* surveys corporate transactions announced during the first half of 2024 that used special committees to manage conflicts, and key Delaware judicial decisions rendered during this period that relate to issues relevant to the use of special committees.

Focusing on Advisor Conflicts

The first half of 2024 saw a sharp focus of the Delaware courts on financial and legal advisor conflicts. Three of the six Delaware judicial decisions involving special committees summarized in this Report turned on such conflicts. In two of those decisions, the Delaware Supreme Court overturned—on the basis of inadequate disclosure of advisor conflicts—lower court rulings dismissing breach of fiduciary duty claims arising from controller take-privates. In the third decision, the Court of Chancery declined to dismiss breach of fiduciary duty claims against the controller and directors of a target company relating to undisclosed conflicts of the financial advisors to the company and to a special committee of the board, and upheld aiding and abetting claims against those advisors on the basis of engagement letters that allegedly aligned their interests with the controller rather than the stockholders as a whole. This trio of recent decisions indicates the need for a high level of vigilance by special committee members and their advisors in identifying and disclosing conflicts in order to realize the benefits of special committee and majority-of-the-minority vote arrangements, as well as the risk to advisors of fee constructs that may be seen to create improper incentives.

Each of these three decisions is more fully summarized in the Recent Special Committee Decisions section of this Report. The discussion below article focuses on the specific financial advisor conflicts at issue in those three cases and the disclosure deficiencies that resulted in potential exposure to the target controllers, directors and bankers. We also offer some best practices to reduce the likelihood of such claims in future transactions.

TerraForm Power

The first decision arose from the take-private of TerraForm Power by its 62% stockholder.[1] The transaction was structured to satisfy the requirements *of Kahn v. M&F Worldwide Corp.* (*MFW*), namely, approval by a special committee of the TerraForm board and a majority-of-the-minority stockholder vote. As a result of these protections, the Court of Chancery dismissed breach of fiduciary duty claims brought by stockholders against the controller and the TerraForm directors. The Delaware Supreme Court reversed on the ground that the stockholder

[1] *City of Dearborn Police & Fire Revised Retirement System (Chapter 23), et al. v. Brookfield Asset Management Inc., et al.*, No. 241, 2023 (Del. Mar. 25, 2024)

Debevoise & Plimpton

vote was uninformed as a result of inadequate disclosure of conflicts of the special committee's advisors.

The special committee's financial advisor and its affiliates held over $470 million of investments in private equity funds managed by affiliates of the controller. Although the proxy statement disclosed that the financial advisor "may have" investments in private equity funds managed by the controller, the company took the view that the aggregate amount of those investments—representing only about one-tenth of one percent of the total assets managed by the advisor—was too small to be material. The Supreme Court disagreed, holding that the materiality of the investment must be determined not in comparison to the overall size of the advisor's investment portfolio but rather from the perspective of the stockholders asked to vote on the transaction. The Court found it reasonably conceivable that a stockholder would consider $470 million to be material in assessing the advisor's objectivity. Moreover, the Court criticized as misleading the statement that the advisor "may have" investments in funds managed by the controller since the advisor in fact did have such investments.

The Court of Chancery had also dismissed claims relating to undisclosed conflicts of the special committee's legal advisor, consisting of three prior and one concurrent representation of the controller in unrelated matters. The Supreme Court, again holding that the materiality of such conflicts must be measured from the point of view of a stockholder deciding how to vote, determined that those conflicts, and in particular the concurrent representation, were material facts that should have been disclosed.

Inovalon Holdings

The second decision arose from the sale of Inovalon Holdings to a private equity firm in a transaction in which the target's controller rolled over a portion of his equity interest.[2] As with TerraForm, the transaction was approved by a special committee of independent directors and a majority-of-the-minority stockholder vote. On that basis the Court of Chancery dismissed breach of fiduciary duty claims brought against Inovalon's controller and directors. Again, the Delaware Supreme Court overturned the trial court decision because of inadequate disclosure of financial advisor conflicts.

The proxy statement disclosed various prior engagements of the special committee's financial advisor with the buyer and its co-investors, including the fees it had earned on those engagements. However, it did not disclose a concurrent sell-side engagement with the buyer or a concurrent placement agent engagement with a co-investor. The proxy statement instead stated that the advisor may in the future provide financial advisory or other services to the company, the buyer and their affiliates. The Supreme Court held that this statement was misleading because when the proxy statement was issued, the advisor already had such conflicting engagements.

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[2] *City of Sarasota Firefighters' Pension Fund, et al. v. Inovalon Holdings, Inc.*, No. 305, 2023 (Del. May 1, 2024)

The proxy statement also disclosed that the company's financial advisor had previous and concurrent engagements with the company, the buyer, and various of the co-investors, and that over the prior two years the financial advisor had received approximately $15.2 million in fees from the buyer. However, the proxy statement did not disclose the amount of fees the advisor had received over the prior two years from the buyer's co-investors, or the amount of fees it expected to earn from its concurrent engagements—only that it had received, and would receive, "customary compensation" in respect of those engagements. The Supreme Court found this disclosure to be inadequate. It held that the failure to disclose expected fees on current engagements "prevented stockholders from contextualizing and evaluating [the advisor]'s concurrent conflicts of interest" and found it reasonably conceivable that additional disclosure "would have altered the total mix of information available to stockholders." The Court contrasted the $15.2 million of disclosed fees paid to the advisor by the buyer with the nearly $400 million of undisclosed fees paid to the advisor by the co-investors. It found the overall disclosure to be misleading because it could have led stockholders to believe that the undisclosed fees paid by co-investors were of a similar magnitude to the disclosed fees paid by the buyer.

Foundation Building Materials

The third decision arose from the sale of Foundation Building Materials, which was controlled by a private equity fund that had a Tax Receivable Agreement (TRA) with the company.[3] The TRA entitled the controller to a termination payment upon a change of control of the company. The Foundation board formed a special committee to address the conflict created by the TRA. The company and the special committee each hired a financial advisor. In both cases, the financial advisor's engagement letter provided for a success fee payable upon the closing of the transaction, the amount of which was determined based on the sum of the deal price plus the TRA change of control payment.

The information statement provided to stockholders following the controller's approval of the transaction by written consent disclosed the fees payable to the two financial advisors but did not disclose the manner in which they were calculated. The Court of Chancery held that the fact that the advisors' fees were based, in part, on the TRA change of control payment, rather than solely on consideration payable to the stockholders for their equity interests, created a conflict of interest for the advisors, and that the failure to disclose that conflict supported a claim for breach of fiduciary duty against the company's directors. In addition, while the information statement described the relationship between the company and its financial advisor and legal counsel, it did not describe the much more extensive relationship that each of them had to the private equity fund that controlled the company. This too was found by the court to support breach of duty claims against the company's directors.

More critically from the point of view of the financial advisors, the Court of Chancery upheld aiding and abetting claims against both advisors. An aiding and abetting claim against an agent

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[3] *Firefighters' Pension System of the City of Kansas City, Missouri Trust v. Foundation Building Materials, Inc. et al.*, C.A. No. 2022-0466-JTL (Del. Ch. May 31, 2024),

requires its "knowing participation" in the fiduciary breach of the principal. Here, the court found that the structure of the advisors' success fees aligned their interests with those of the controller, and that this alignment was sufficient to support the aiding and abetting claim. In fact, the court questioned the propriety of the special committee's advisor receiving any success fee at all: "It is one thing to pay contingent compensation to the financial advisor charged with securing the best deal reasonably available. It is another thing to pay contingent compensation to the financial advisor who is supposed to be willing to tell the special committee that the deal should not happen. Because of that different role, a special committee's financial advisor should not receive contingent compensation."

Lessons and Recommendations

There are a number of lessons that can be taken from this trio of decisions.

It's not the conflict, it's the disclosure. In the *Inovalon* decision, the Delaware Supreme Court cited prior holdings to the effect that "there is no hard and fast rule that requires financial advisors to always disclose the specific amount of their fees from a counterparty in a transaction. Rather, the materiality standard governs whether a financial advisor's exact amount of fees collected from a counterparty to a transaction requires disclosure."[4] Nonetheless, these decisions indicate that the bar for materiality is lower than parties may have thought. Rather than trying to identify the line between material and not material, advisors may be better off focusing on the Supreme Court's statements in *TerraForm* as to "the need for transparency in [a] special committee's reliance on its advisors" and the requirement of "full disclosure of investment banker compensation and potential conflicts."

Compliance with Securities and Exchange Commission requirements is not sufficient. Item of 1015 of the SEC's Regulation M-A requires an advisor that delivers a report or opinion (other than a legal opinion) to a public company involved in an M&A transaction to disclose various things about the engagement, including material relationships that existed in the past two years between the advisor and its affiliates and the public company and its affiliates and the amount of compensation received or to be received as a result of those relationships. Issuers and their counsel take great care to comply with this requirement, and such compliance is policed by the SEC, which in reviewing proposed disclosure statements sometimes requests even more detailed information. However, satisfying the SEC's requirements may not be sufficient to satisfy the Delaware courts that directors have satisfied their fiduciary duty of disclosure under Delaware law, or that a majority-of-the-minority vote was "fully informed" for purposes of obtaining the benefit of business judgment rule review under *MFW*.

What goes into an advisory fee calculation may be more important than what comes out. The amount of the fees payable to the financial advisors to Foundation Building Materials and the special committee of its board were disclosed, as were the other relationships between those firms and the controller and buyer. However, the Supreme Court held that in light of the

4 *Inovalon*, pp. 43-44.

specific conflicts at issue, this was not sufficient to meet Delaware's requirement for "full and fair disclosure regarding financial advisor conflicts and compensation arrangements," and that the inputs to the fee calculation should have also been disclosed. The Court considered the fact that the advisors' financial incentives were tied to the conflict between the controller and the minority stockholders to be more relevant to the minority than the amount of the payment itself. Although the circumstances here may be unusual, issuers and advisers should consider what incentives may be created by various fee structures and whether those incentives should be specifically disclosed.

It's fine to put things in context, so long as it is the context of the stockholders. One tenth of one percent may not be much, but $470 million is a lot. What is immaterial to a large financial institution may be deemed to be quite material by an individual stockholder. In the context of a proxy statement, it is usually the point of view of the latter that matters.

Don't wish on may or might. Both Supreme Court decisions found fault with disclosures about investments an advisor may have made or engagements it might undertake, where those events in fact actually occurred or currently existed. Proxy statement disclosures in the subjunctive mood invite skepticism and risk being found to be inherently misleading.

Concurrent conflicts may trump prior ones. In its *TerraForm* decision, the Supreme Court held that three undisclosed recent but completed engagements of the legal advisor to the special committee by the controller may not have been, standing alone, sufficient to state a disclosure claim, but the firm's one undisclosed concurrent engagement with the controller tipped the balance. In its *Inovalon* decision, the Court also seemed more concerned with the financial advisors' concurrent engagements with related parties than its past engagements. In each case, the Court held that such relationships, while not necessarily disabling, were material and should have been disclosed.

Make sure advisory incentives are properly aligned. For advisors, the most concerning element of these decisions is the holding of the Court of Chancery in *Foundation Building Materials* declining to dismiss aiding and abetting claims against the financial advisors to the target and the special committee based on conflicts stemming from the fee construct in the advisors' engagement letters. The court did not find it relevant that the term creating the conflict represented only five percent of the fees that the advisors earned from the transaction. Financial advisors and their counsel should review carefully the financial incentives created by the advisor's engagement letters and seek to maximize, to the extent possible, alignment with interests of the advisory client.

Be cautious about incentive arrangements in special committee engagements. Using a special committee to address conflicts in a proposed transaction involving conflicted fiduciaries is effective only if the special committee has "the power to say no" to the transaction. *Foundation Building Materials* is not the first Delaware decision to have questioned the compensation arrangements that give the persons on whom the committee relies for financial advice a

Debevoise & Plimpton

significant economic incentive to support the transaction.[5] While clients are often reluctant to commit to paying large fees in the absence of any transaction, special committees and their advisors should consider carefully the potential risks as well as rewards of success fee arrangements.

Recent Special Committee Decisions

Court of Chancery rescinds Elon Musk's incentive compensation award in a decision providing guidance on matters relevant to special committees.

The Delaware Court of Chancery ordered the rescission of a $55.8 billion incentive compensation award granted by Tesla to Elon Musk on the basis that the award was unfair to Tesla. While the decision did not involve a special committee, it provides guidance relevant to special committee matters, including as to (i) the circumstances in which a minority stockholder can be a controller, (ii) how otherwise independent directors can be found to lack independence as a result of laboring under a "controlled mindset" and (iii) how disclosure flaws relating to director independence can vitiate the protections of a majority-of-the-minority stockholder vote.

The court found that Musk, a 21.9% stockholder, exercised "transaction-specific control" over Tesla with regard to the compensation award. Musk's control derived not from his large minority stock ownership alone, but also because he was "the paradigmatic `Superstar CEO'"—wielding "the maximum influence that a manager can wield over a company"—with extensive ties to the members of the Tesla board responsible for negotiating the compensation plan.

The court held that social, professional and economic ties to a controller can compromise director independence. Leaving aside Musk and his brother, the court found that all but one of the other Tesla directors, including at least half the members of the compensation committee, had economic or personal ties (or both) that compromised independence. The court also took note of the vast wealth Tesla directors amassed from their compensation as directors. The court assessed these relationships in the context of the directors' behavior. It found "multiple aspects" of the process to reveal that the directors had a "controlled mindset," worked under a "recklessly fast" timetable dictated by Musk and failed to negotiate the most basic terms of the award, including its size. Finally, the court observed that the testimony of the defendant directors indicated that they did not view themselves as being in an arm's-length negotiation against Musk, but rather in a "cooperative, collaborative process" in which there was no "positional negotiation."

The award was subject to a majority-of-the-minority stockholder vote. However, the court found that Tesla's proxy statement "inaccurately described key directors as independent and

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5 *See In re Tele-Commc'ns, Inc. S'holders Litig.*, 2005 WL 3642727 (Del. Ch. Dec. 21, 2006) ("[T]he contingent compensation of the financial advisor, of roughly $40 million creates a serious issue of material fact, as to whether [the advisor] (and [it]s legal counsel) could provide independent advice to the Special Committee.").

misleadingly omitted details about the process," as a result of which the benefits of the minority stockholder approval were not obtained. The court held that disclosures about director conflicts must include not only actual conflicts but also potential conflicts. The court found that Tesla's proxy statement described the members of the compensation committee as independent and failed to disclose any actual or potential conflicts—including their personal and economic ties to Musk. The court also faulted the proxy statement's disclosure of the process leading to approval of the compensation award, and criticized the proxy statement's failure to disclose material non-economic terms of the award. *Tornetta v. Musk et al.*, C.A. No. 2018-0408-KSJM (Del. Ch. Jan. 30, 2024).[6]

Court of Chancery declines to dismiss claims that decision to reincorporate to Nevada provided non-ratable benefit to controller, noting among other things the absence of a special committee process.

The Court of Chancery denied a motion to dismiss claims that the decision of the board of TripAdvisor, Inc. to convert the company from a Delaware corporation to a Nevada corporation breached the fiduciary duties of TripAdvisor's directors and its CEO/Chair and controlling stockholder. According to the court, the plaintiffs adequately pled that the conversion was a self-interested transaction because Nevada offers fewer litigation rights to the non-controlling stockholders and greater litigation protection to the directors and the CEO/Chair—including, for example, not subjecting controller transactions to a test of entire fairness—thereby affording the defendants a non-ratable benefit. The court found that because no protective devices such as a special committee or a majority-of-the-minority vote were used, and because the stockholders were not compensated for the reduction in their litigation rights, the conversion should be judged under the test of entire fairness. However, the court declined to enjoin the conversion, finding that monetary damages would provide an adequate remedy if plaintiffs ultimately prevail on the merits. *Dennis Palkon, et al. v. Gregory B. Maffei, et al. and TripAdvisor, Inc., et al.*, C.A. No. 2023-0449-JTL, opinion (Del. Ch. Feb. 20, 2024).

Delaware Supreme Court holds conflicts of special committee's financial and legal advisors to be material, and the failure to disclose those conflicts renders majority of the minority vote to be uninformed and *MFW* therefore inapplicable.

Affiliates of Brookfield, which owned 62% of TerraForm Power, acquired the remaining shares of TerraForm in a transaction that was subject to the approval of a special committee of independent TerraForm directors and the vote of the holders of a majority of its unaffiliated equity interests. Following closing, former TerraForm stockholders brought fiduciary duty claims against Brookfield and the TerraForm directors. The Court of Chancery dismissed those claims on the basis that the *MFW* requirements were satisfied. Plaintiffs appealed, asserting,

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[6] Following the Court of Chancery decision, Telsa held another stockholder vote, with additional disclosure (including a copy of the Court's opinion), and Tesla stockholders, including a majority of the stockholders not affiliated with Musk, again approved the Musk award.

among other things, that the special committee was coerced by Brookfield's threat to withhold further funding if the transaction didn't take place and that the majority of the minority stockholder vote was not fully informed due to the failure to disclose the conflicts of the special committee's financial and legal advisors.

The Delaware Supreme Court rejected the coercion claim but held that the failure of the proxy to disclose the conflicts of the advisors to the Special Committee was a material omission that rendered the minority stockholder vote uninformed. The committee's financial advisor had advised Brookfield and TerraForm over the prior two years in various matters resulting in fees of up to $100 million, was concurrently serving as a lender and participant in certain financings for Brookfield entities, and held $470 million of equity in Brookfield controlled entities. The committee's legal counsel had previously advised Brookfield entities on prior transactions and was concurrently advising Brookfield on a separate equity investment. None of these conflicts was disclosed to the Special Committee or in the proxy statement. The Supreme Court rejected the trial court's determination that the $470 million equity interest was not material due to its size relative to the advisor's overall investment portfolio. Rather, the court held that the proper measure is whether the size of the investment was material to the target stockholders, and concluded that when viewed from the perspective of a reasonable stockholder that it was. The Court held that the other conflicts of the committee's financial advisor and those of its legal advisor—particularly the concurrent representation—were also material and should have been disclosed. *City of Dearborn Police & Fire Revised Retirement System (Chapter 23), et al. v. Brookfield Asset Management Inc., et al.*, No. 241, 2023, opinion (Del. Mar. 25, 2024).

Delaware Supreme Court holds entire fairness applicable to all conflicted controller transactions, and that *MFW* requires all members of Special Committee to be independent.

In connection with a challenge to the 2019 separation of IAC/InteractiveCorp from its majority ownership of Match Group, Inc., the Delaware Supreme Court made two important holdings relevant to the use of Special Committees. Overruling a decision by the Court of Chancery, the Supreme Court held that (i) absent compliance with *MFW*, the test of entire fairness applies to any transaction in which the controlling stockholder stands on both sides of a transaction and (ii) in order to comply with *MFW*, the special committee must be entirely independent.

The trial court—in a decision discussed in the August 2023 edition of this Report—had held the separation transaction to be subject to business judgment review because it had been approved by an independent and disinterested "separation committee" of the Match board and by an uncoerced, fully informed vote of holders of a majority of the minority Match shares, notwithstanding allegations by the plaintiffs that the separation committee was not fully independent of IAC. On appeal, plaintiffs sought reversal of the lower court's holding that well-pled allegations that one member of the committee lacked independence were insufficient to call into question the effectiveness of the committee on the grounds that the allegedly conflicted director did not "dominate" or "infect" the committee's decision-making process.

Defendants, on the other hand, asserted that satisfaction of both *MFW* conditions was not necessary because the transaction did not involve a freeze-out merger.

The Supreme Court agreed that the plaintiffs had adequately pled that one member of the Match separation committee lacked independence from IAC based on his prior employment with IAC and his service as a director of IAC-affiliated companies, noting that "longstanding business affiliations, particularly those based on mutual respect, are the sort that can undermine a director's independence." The Court rejected the lower court's view that, because there had been no allegation that the challenged director "dominated" or "infected" the separation committee's decision-making, the independence of a majority of the committee sufficed to satisfy the special committee approval prong of *MFW*, holding a controlling stockholder's influence is not "disabled" if a special committee includes *any* member loyal to the controller.

The Supreme Court rejected defendant's argument that *MFW* was intended to be confined to controller squeeze-outs. Rather, the Court held that *MFW* was animated by the concern that whenever a controller stands on both sides of a transaction and receives a non-ratable benefit it has "inherently coercive authority over the board and the minority stockholders" that may be used to its advantage. Because this inherent coercion could be neutralized only if the controller disabled itself from "using its control to dictate the outcome of the negotiations and the stockholder vote," the Supreme Court held that the transaction was subject to entire fairness review unless the *MFW* conditions were satisfied. *In re Match Group Deriv. Litig.*, C.A. No. 2020-0505 (Del. Apr. 4, 2024).

Delaware Supreme Court holds that deficient banker conflict disclosures defeat applicability of *MFW*.

The Delaware Supreme Court—reversing a decision by the Court of Chancery that dismissed challenges to a controller take-private on that the transaction complied with *MFW*—held that inadequate disclosure of conflicts of interest on the part of the financial advisors to the special committee rendered the majority-of-the-minority stockholder vote approving the transaction not fully informed.

The decision involved a challenge to the acquisition of Inovalon Holdings by a consortium of investors led by Nordic Capital. Inovalon was controlled by its founder and CEO, who held super-voting shares and who rolled over a portion of his equity interests in the transaction. The transaction was subject to approval by a special committee and by a majority-of-the-minority stockholder vote. The two financial advisors—one hired early in the process by Inovalon and the other hired by the special committee—each provided relationship disclosure to the special committee, specifying work for Nordic on unrelated matters, although the first advisor's disclosure did not mention prior business with other members of Nordic's equity consortium.

The Court of Chancery found that the requirements of *MFW* had been satisfied and dismissed post-closing breach of fiduciary duty claims brought against the founder and the other Inovalon directors. On appeal, the plaintiffs asserted that the transaction failed to comply with *MFW*'s *ab initio* test, because the founder engaged in substantive negotiations before the special committee

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was formed, and that the majority-of-the-minority vote was not fully informed due to inadequate disclosure of the banker conflicts. The court reversed on the basis of the second argument and did not reach the *ab initio* question.

The court found that the Inovalon proxy statement failed to adequately disclose conflicts of both financial advisors. It found that language stating that the second advisor "may provide" services to Nordic and its co-investors was misleading given that the advisor was in fact providing such services, creating a concurrent conflict. In the case of the first advisor, the court held that disclosure that the bank would receive "customary compensation" in connection with disclosed concurrent representations was insufficient because it kept stockholders from contextualizing and evaluating the conflicts. It also found that the proxy statement failed to disclose the first advisor's fees for prior work for members of Nordic's equity consortium, which amounted to nearly $400 million in the relevant two-year period. The court stated that while "there is no hard and fast rule that requires financial advisors to always disclose the specific amount of their fees from a counterparty," the question is subject to a materiality standard—which standard the court found was met in this case, noting that the undisclosed compensation was roughly 25 times the disclosed fees that the first advisor received from Nordic and 10 times the fees that it received in the transaction, thus creating a misleading picture. *City of Sarasota Firefighters' Pension Fund et al. v. Inovalon Holdings, Inc. et al.*, No. 305, 2023 (Del. May 1, 2024).

Court of Chancery declines to dismiss fiduciary duty and aiding and abetting claims in connection with sale that triggered TRA termination payment.

The Delaware Court of Chancery declined to dismiss fiduciary duty claims against the directors, special committee members and controlling stockholder of Foundation Building Materials arising from its 2020 sale to American Securities. The transaction triggered a $75 million early termination payment to Lone Star, Foundation's controlling stockholder, under a tax receivable agreement (TRA) entered into at the time of Foundation's IPO. As a result, the court held that the decision to pursue a sale of the Company, rather than to continue to operate as a stand-alone entity, was subject to entire fairness review. The court also allowed claims against the financial advisers to the Company and the special committee for aiding and abetting fiduciary breaches, including disclosure violations relating to the role of the TRA in merger discussions, the bankers' fee arrangements, and the relationship to Lone Star of the Company's financial advisor and transaction counsel. The court dismissed claims against Lone Star, its affiliated board members and the Company's CEO for following an unreasonable sale process (noting that those defendants faced a conflict in deciding whether to sell the Company, but not in seeking to maximize the sale price) and for using the TRA early termination payment to divert merger consideration from unaffiliated stockholders (on the grounds that Lone Star was contractually entitled to receive the payment and had no obligation to disclaim that right). The court's analysis of the conflicts of the financial advisors to the Company and to the special committee, and the aiding and abetting claims against those advisors, are discussed in greater detail in the prior section of this Report. *Firefighters' Pension System of the City of Kansas City, Missouri Trust v. Foundation Building Materials, Inc.* et *al.*, C.A. No. 2022-0466-JTL (Del. Ch. May 31, 2024).

Special Committee Transaction Overview[7]

Transaction Summary and Reasons for Special Committee	On June 7, 2024, BCPE Polymath Buyer, Inc. (“Purchaser”), an affiliate of Bain Capital, LLC (“Bain”), entered into a definitive agreement to acquire PowerSchool Holdings, Inc. (“PowerSchool”) for $22.80 in cash per share by means of a merger of a wholly owned subsidiary of Purchaser with and into PowerSchool. Vista Equity Partners (“Vista”) and Onex Partners Managers L.P. (“Onex”), which collectively held approximately 70.6% of the voting power of the common stock of PowerSchool, agreed to rollover a portion of their shares in the transaction. Vista and Onex each entered into support agreements pursuant to which they agreed to vote in favor of the transaction. The transaction was approved by a special committee of PowerSchool’s board of directors comprised solely of disinterested and independent directors, and by the written consent by stockholders of PowerSchool holding a majority of the voting power of PowerSchool.
Announced Date	June 7, 2024
Target Name	PowerSchool Holdings, Inc. (a Delaware corporation)
Acquirer Name	BCPE Polymath Buyer, Inc. (a Delaware corporation), an affiliate of Bain Capital, LLC
Equity Value	$5,600,000,000
Transaction Status	Pending
Was MFW Used?	No

7 This Special Committee Transaction Overview generally does not include transactions with an equity value less than $500 million (excluding, unless otherwise indicated, the value of the equity already owned by the acquirer and its affiliates).

Transaction Summary and Reasons for Special Committee	On May 17, 2024, Iberdrola, S.A. (“Iberdrola”) entered into a definitive agreement to acquire Avangrid, Inc. (“Avangrid”) for $35.75 in cash per share by means of a merger of a wholly owned subsidiary of Iberdrola with and into Avangrid. At the time of signing, Iberdrola owned approximately 81.6% of Avangrid’s common stock. The transaction was approved by a special committee of Avangrid’s board of directors comprised solely of disinterested and independent directors and was subject to the approval by holders of a majority of the shares of common stock of Avangrid held by shareholders other than Iberdrola, its subsidiaries and their controlled affiliates, members of Avangrid’s board of directors who are employees of Iberdrola or its affiliates, any officer of Avangrid, and any family member, affiliates or associates of the foregoing.
Announced Date	May 17, 2024
Target Name	Avangrid, Inc. (a New York corporation)
Acquirer Name	Iberdrola, S.A. (a Spanish corporation)
Equity Value	$2,544,000,000
Transaction Status	Pending
Was MFW Used?	Yes

Transaction Summary and Reasons for Special Committee	On May 14, 2024, Lazydays Holdings, Inc., a Delaware corporation (“Lazydays”), and certain of its subsidiaries entered into an amendment of its credit agreement with Manufacturers and Traders Trust Company. Among other things, the Ccredit agreement amendment required a $15 million capital infusion into Lazydays. To comply with this requirement, Lazydays amended its existing mortgage loan agreement with Coliseum Holdings I, LLC, a significant stockholder of the company (“Coliseum”), to increase the principal amount of the mortgage loan by $15 million. In connection with the mortgage loan amendment, Lazydays issued warrants to Coliseum to purchase up to 2,000,000 shares of Lazydays’ common stock. The mortgage loan amendment, including the issuance of warrants to the Coliseum, was approved by a special committee of Lazydays’s board of directors comprised solely of disinterested and independent members.
Announced Date	May 14, 2024
Target Name	N/A
Acquirer Name	N/A

Equity Value	N/A
Transaction Status	Completed
Was MFW Used?	No

Transaction Summary and Reasons for Special Committee	On May 13, 2024, Spaceship Purchaser, Inc. ("Spaceship"), an affiliate of Permira Advisers LLC ("Permira"), entered into a definitive agreement to acquire Squarespace, Inc. ("Squarespace") for $44.00 in cash per share by means of a merger of a wholly owned subsidiary of Spaceship with and into Squarespace. Anthony Casalena (the founder, Chief Executive Officer and Chair of the board of Squarespace) and his controlled affiliates ("Casalena"), and affiliates of General Atlantic, L.P. ("General Atlantic") and Accel Management Co. Inc. ("Accel"), which, at the time of signing, owned approximately 89.1% of the voting power of the common stock of Squarespace, agreed to roll over a portion of their shares such that they will own (directly or indirectly) approximately 42% of Squarespace following the transaction. Casalena, General Atlantic and Accel each entered into support agreements pursuant to which they agreed to vote in favor of the transaction. The transaction was approved by a special committee of Squarespace's board of directors comprised solely of disinterested and independent directors and is subject to the approval by holders of (i) a majority of the shares of common stock of Squarespace entitled to vote on the transaction, (ii) a majority of the shares of common stock of Squarespace not owned, directly or indirectly by Casalena, General Atlantic, Accel, Permira, the members of the board of Squarespace or by Section 16 officers of Squarespace, (iii) a majority of the shares of Class A Common Stock and (iv) a majority of the shares of Class B Common Stock.
Announced Date	May 13, 2024
Target Name	Squarespace, Inc. (a Delaware corporation)
Acquirer Name	Spaceship Purchaser, Inc. (a Delaware corporation), a vehicle of Permira Advisers LLC
Equity Value	$6,600,000,000
Transaction Status	Pending
Was MFW Used?	Yes

Transaction Summary and Reasons for Special Committee	On April 2, 2024, Silver Lake Partners ("Silver Lake") entered into a definitive agreement to acquire Endeavor Group Holdings, Inc. ("Endeavor") for $27.50 in cash per share by means of a merger of wholly-owned subsidiaries of Silver Lake with and into Endeavor. At the time of signing, Silver Lake beneficially owned approximately 73.2% of the voting power of Endeavor's common stock. The transaction was approved by a special committee of Endeavor's board of directors comprised solely of disinterested and independent directors, and was approved via written consent by affiliates of Silver Lake as the holder a majority of the shares of Endeavor.
Announced Date	April 2, 2024
Target Name	Endeavor Group Holdings, Inc. (a Delaware corporation)
Acquirer Name	Silver Lake Partners
Equity Value	$13,000,000,000
Transaction Status	Pending
Was MFW Used?	No

Transaction Summary and Reasons for Special Committee	On January 18, 2024, Creedence Acquisition ULC, an acquisition vehicle of Blackstone Real Estate Partners X L.P. and Blackstone Real Estate Income Trust, Inc. (collectively, "Blackstone") entered into a definitive agreement to acquire Tricon Residential Inc. ("Tricon") for $11.25 in cash per share by means of a court-approved statutory plan of arrangement pursuant to the provisions of the (Ontario) Business Corporations Act. At the time of signing, Blackstone beneficially owned approximately 9.5% of the voting power of Tricon's common stock. The transaction was approved by a special committee of Tricon's board of directors comprised solely of disinterested and independent directors and was subject to the approval by holders of (i) a two-thirds majority of the shares of Tricon entitled to vote on the transaction and (ii) a majority of the shares of Tricon not affiliated with Blackstone, David Berman (the executive Chairman of the Board of Directors of Tricon) and Gary Berman (the Chief Executive Officer of Tricon), who collectively hold approximately 11.7% of the voting power of Tricon.
Announced Date	January 18, 2024
Target Name	Tricon Residential Inc. (a Canadian corporation)
Acquirer Name	Creedence Acquisition ULC (a Delaware limited liability company), a vehicle of Blackstone Real Estate Partners X L.P. and Blackstone Real Estate Income Trust, Inc.

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Equity Value	$3,064,000,000
Transaction Status	Completed
Was MFW Used?	Not applicable given non-US governing law, but a vote of a majority of the minority stockholders was required under Multilateral Instrument 61-101.

Transaction Summary and Reasons for Special Committee	On January 16, 2024, Restaurant Brands International, Inc. ("Restaurant Brands") entered into a definitive agreement to acquire Carrols Restaurant Group, Inc. ("Carrols") for $9.55 in cash per share by means of a merger of a wholly owned subsidiary of Restaurant Brands with and into Carrols. At the time of signing, Restaurant Brands beneficially owned approximately 14.6% of the voting power of Carrol's common stock (after giving effect to the conversion of Carrol's Series D Convertible Preferred Stock). The transaction was approved by a special committee of Carrol's board of directors comprised solely of disinterested and independent directors and was subject to the approval by holders of (i) a majority of the shares of common stock of Carrols entitled to vote on the transaction and (ii) a majority of the shares of common stock of Carrols not affiliated with Restaurant Brands and its affiliates, members of Carrols's board of directors who are employees of Restaurant Brands or its affiliates, any officer of Carrols, and any family member of the foregoing.
Announced Date	January 16, 2024
Target Name	Carrols Restaurant Group, Inc. (a Delaware corporation)
Acquirer Name	Restaurant Brands International Inc. (a Canadian corporation)
Equity Value	$1,000,000,000
Transaction Status	Completed
Was *MFW* Used?	Yes

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Debevoise & Plimpton LLP has decades of experience in assisting special committees in transactions involving conflicted fiduciaries and other parties including controlling stockholders, other conflicted fiduciaries and transactional counterparties in transactions involving special committees. We keep databases of information relevant to the formation of special committees and regularly present on topics relating to special committees. We welcome the opportunity to speak with corporate general counsel, directors, advisors and others regarding these matters.

Please do not hesitate to contact us with any questions.

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