Weil Alert

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Delaware Public Benefit Corporations: No Duty to “Maximize Value” In A Change Of Control Transaction

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Since Public Benefit Corporations (“PBCs”) — i.e., for-profit, mission-driven corporations—were first authorized under the Delaware General Corporation Law (the “DGCL”) in 2013, Delaware PBCs have gone from niche legal curiosity to mainstream. Initially popular among startups and mission-driven private companies, PBCs are now prevalent in industries ranging from personal finance banking to consumer products to artificial intelligence systems, with nearly two dozen Delaware PBCs trading (or planning to trade in the near future) on public securities markets, and more expected. Delaware case law considering the fiduciary duties of PBC directors and officers, however, has remained scarce.

In a recent case of first impression, *Drakes Landing Associates, L.P. v. Tilden Park Capital Management, L.P.*, C.A. No. 2025-0898-NAC (Del. Ch. July 29, 2026), the Delaware Court of Chancery addressed the fiduciary duties of PBC directors in a change of control transaction arising from a distressed financing that substantially diluted existing stockholders. Notably, the Court of Chancery affirmed that the fiduciary duties of PBC directors are defined by statute (DGCL § 365), which permits PBC directors to consider and balance interests beyond solely the best interest of the PBC and its stockholders. Accordingly, the Court of Chancery held that so-called “*Revlon* duties,” which require directors of traditional Delaware corporations to singularly focus on “maximizing value” for stockholders in exercising their fiduciary duties in a change of control transaction, are incompatible with the PBC statutory fiduciary duty framework.

In this Alert, we briefly discuss Delaware PBCs, review the *Drakes Landing* decision, and provide key takeaways for PBCs, their boards, and other companies that may want to explore becoming a PBC.

What is a Delaware PBC and How Does It Differ From a Traditional Corporation?

Pursuant to Sections 361 to 368 of the DGCL, a Delaware corporation can elect to become a public benefit corporation in accordance with the applicable provisions of the DGCL. More recent interest in PBCs as a corporate form was bolstered by 2020 amendments to the DGCL that eliminated the supermajority vote required, and the appraisal right provided, in connection with the conversion of Delaware corporations into PBCs (and vice versa).

Among the key distinguishing characteristics of Delaware PBCs from traditional corporations are:

- **Public Benefit Purpose (DGCL § 362).** Delaware PBCs must have one or more public benefits, which must be stated in the certificate of incorporation (e.g., creating a material positive impact on society and the environment, bringing ethically produced food to the table, etc.) and operate in a responsible and sustainable manner.
- **Requirement to Balance PBC Stakeholder Interests (DGCL § 365(a)).** Delaware PBCs are to be managed in a manner that balances (1) the stockholders' pecuniary interests, (2) the best interests of those materially affected by the corporation's conduct, and (3) the public benefit or public benefits identified in the certificate of incorporation.
- **Statutory Safe Harbor for PBC Directors (DGCL § 365(b) & (c)).** Directors "will be deemed to satisfy such director's fiduciary duties to stockholders and the corporation" if the decision is (i) informed, (ii) disinterested, and (iii) "not such that no person of ordinary, sound judgment would approve." Further, absent a conflict of interest, a failure to satisfy the balancing requirement in 365(a) does not constitute bad faith or a loyalty breach for purposes of Sections 102(b)(7) and 145 of the DGCL unless the company's certificate of incorporation provides otherwise.
- **Specified PBC Ownership Required for Standing to Enforce Balancing Test (DGCL § 367).** Plaintiffs in an action, whether individual, derivative or any other type of action, must own at least 2% of the corporation's outstanding shares (or for publicly-traded PBCs, the lesser or 2% or $2 million) as of the date the action is instituted in order to bring the action.
- **Report to Stockholders (DGCL § 366).** A PBC must provide a report to its stockholders at least once every other year that includes, among other specific items, a statement as to the PBC's promotion of the public benefit(s) identified in the certificate of incorporation and of the best interests of those materially affected by the PBC's conduct.

The *Drakes Landing* Decision

The *Drakes Landing* decision is the first judicial decision offering guidance on the fiduciary duties of Delaware PBC directors in the context of a change of control. MPower Financing, PBC ("MPower"), a Delaware PBC with a stated mission focused on expanding access to higher education for international students, was facing a liquidity crisis. After failing to secure equity financing, MPower reached a deal with two of its existing equity holders, who were also significant lenders, pursuant to which those equity holders would contribute $20 million in additional capital and convert nearly $109 million in MPower debt to equity, thereby increasing their aggregate equity interest in MPower from approximately 25% to nearly 85%. To evaluate the proposed transaction, the MPower board of directors created a special committee of disinterested and independent directors. The special committee ultimately approved the transaction without a stockholder vote. Subsequently, stockholders whose equity interests had been diluted as a result of the transaction brought breach of fiduciary duty claims against the special committee directors. Specifically, the stockholders alleged that the MPower's directors failed to maximize value in a change of control transaction, as required in traditional Delaware corporations under *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986).

In considering the novel question of whether *Revlon* applies to PBCs, the court began with first principles: "'[w]hen determining whether corporate fiduciaries have breached their duties, Delaware corporate law distinguishes between the standard of conduct and the standard of review.'" Slip Op. at 10 (citations omitted). "'The standard of conduct describes what directors are expected to do and is defined by the content of the duties of loyalty and care. The standard of review is the test that a court applies when evaluating whether directors have met the standard of conduct." *Id.* (citations omitted). The Court of

Chancery acknowledged that Delaware law is "arguably unclear" as to whether *Revlon* imposes a standard of conduct, a standard of review, or both.

As to the standard of conduct, the Court of Chancery noted that for directors of traditional corporations where the *Revlon* doctrine developed, "the standard of conduct requires that directors seek 'to promote the value of the corporation for the benefit of its stockholders.'" Slip Op. at 11 (citations omitted). In contrast, "[t]he standard of conduct for directors of public benefit corporations is slightly different" because it is prescribed by statute (DGCL § 365(a)) and requires directors of PBCs to "manage the business and affairs of the public benefit corporation in a manner that balances the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit or public benefits identified in its certificate of incorporation." Slip Op. at 11-12 (quoting DGCL § 365(a)). Thus, "[t]o say that directors of a public benefit corporation 'must perform [their] fiduciary duties in the service of [the] specific objective' of 'maximizing the sale price of the enterprise,' or that they 'must focus on' that 'primary objective[,]' would be inconsistent with the public benefit corporation statute's requirement that directors consider and balance other interests against stockholder pecuniary interests." Slip Op. at 15 (citations omitted).

As to the standard of review, the court noted that "'Delaware has three tiers of review for evaluating director decision-making: the business judgment rule, enhanced scrutiny, and entire fairness.'" Slip Op. at 12. "For transactions involving a change of control, the presumptive standard of review is enhanced scrutiny under *Revlon* and its progeny." *Id.* (citations omitted). The court explained that "'[e]nhanced scrutiny applies in this setting because the potential sale of a corporation has enormous implications for corporate managers and advisors, and a range of human motivations, including but by no means limited to greed, can inspire fiduciaries and their advisors be less than faithful.'" *Id.* (citations omitted). Thus, the Court of Chancery acknowledged that, "[c]onstruing *Revlon* as a standard of review, there may "still [be] room for *Revlon* to apply in the public benefit corporation context," because "[t]he 'enormous implications' inherent in a change-of-control transaction do not vanish simply because a corporation is a public benefit corporation." Slip Op. at 16 (citations omitted). Nevertheless, the Court of Chancery declined to reach the issue of whether enhanced scrutiny applies to a change of control transaction in the PBC context because the Plaintiffs failed to plead facts to rebut the statutory safe harbor under DGCL § 365(b), which provides that a director of a PBC is deemed to have satisfied fiduciary duties to stockholders and the PBC if the challenged decision was made on an informed and disinterested basis, and "not such that no person of ordinary, sound judgment would approve."

Key Takeaways

- **The fiduciary duties of PBC directors are defined by statute.** The *Drakes Landing* decision reinforces that the duties of PBC directors are different than those of traditional Delaware corporations because PBC directors are required by statute (DGCL § 365(a)) to consider and balance stockholder pecuniary interests against the interests of other stakeholders.
- **PBC directors do not have "*Revlon* duties" to maximize value in a change of control.** When a PBC board approves a sale of control, it is not required to solely pursue the highest available price to the exclusion of all other considerations. Instead, PBC directors must weigh stockholder financial interests alongside the company's public benefit mission and the welfare of materially affected stakeholders.
- **PBC statutory safe harbor protections apply to change of control transactions.** DGCL § 365(b) provides a robust statutory safe harbor that forecloses PBC director breach of duty claims in balancing the competing considerations under DGCL § 365(a), provided that director decisions were informed, disinterested, and not irrational.

- **PBCs may make desirable M&A targets.** *Drakes Landing* demonstrates that the fiduciary landscape governing change of control transactions is different when the target is a PBC. Private equity sponsors, lenders, and strategic acquirors, should account for these dynamics in their risk assessments when evaluating transactions.
- **Maintain robust board records to memorialize the DGCL § 365(a) balancing analysis**. The Plaintiffs' claims in *Drakes Landing* failed in part because the Plaintiffs failed to plead facts rebutting the statutory safe harbor under DGCL § 365(b), and the Court of Chancery noted that the Plaintiffs failed to seek books and records to support their claims under DGCL § 220. As with all corporate transactions, it is important for PBC boards to maintain a robust and thoughtful contemporaneous record of the board's consideration and balancing of interests under DGCL § 365(a) and the other aspects of the board's decision-making process.

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If you have questions concerning the contents of this alert, or would like more information, please speak to your regular contact at Weil or to any of the following:

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