

Oregon Supreme Court enforces Delaware exclusive forum selection bylaw

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In recent years, many courts across the country – including courts in California, Illinois, Louisiana, New York and Texas – have followed the Delaware Court of Chancery's and legislature's lead and held that exclusive forum selection bylaws are valid and enforceable. One notable exception to that trend was an August 2014 opinion from an Oregon trial court, which refused to enforce a Delaware exclusive forum selection bylaw that would have barred an Oregon litigation challenging a merger between TriQuint Semiconductor, Inc and RF Micro Devices, Inc (for further details please see "[Oregon court refuses to enforce Delaware exclusive forum selection bylaw](#)"). The Oregon Supreme Court recently reversed that trial court ruling, holding that TriQuint's exclusive forum selection bylaw was valid and enforceable, and compelled stockholders challenging the transaction to pursue their claims in Delaware.⁽¹⁾

In reversing the trial court's ruling, the Oregon Supreme Court held that the TriQuint exclusive forum selection bylaw was valid under both Delaware and Oregon law. The court first held that, as stated by the Delaware Court of Chancery in its opinions in *Chevron* and *First Citizens*, Delaware corporations are generally permitted to adopt exclusive forum selection bylaws (as further memorialised in Section 115 of the Delaware General Corporation Law). The court proceeded to hold that the forum selection bylaw adopted by TriQuint was enforceable, even though it was adopted two days before the public announcement of the TriQuint/RF merger and the plaintiffs had claimed that it was enacted for an improper purpose. In so holding, the Supreme Court rejected the trial court's conclusion that the bylaw was invalid because the TriQuint stockholders did not have an adequate opportunity to reverse the bylaw by vote. The court also rejected the trial court's reliance on the 1971 Delaware Supreme Court decision in *Schnell v Chris-Craft Industries, Inc*, holding that the TriQuint bylaw did not prevent TriQuint's stockholders from challenging the merger, but only dictated the forum in which they could do so. Here, the Supreme Court noted that exclusive forum selection bylaws benefit corporations and their stockholders by eliminating the costs incurred by "a multiplicity of suits in various states", and that the plaintiffs would not be harmed by litigating their claims in Delaware.

The Supreme Court also held that TriQuint's forum selection bylaw was valid under Oregon law, stating that comity and respect for Delaware corporate law mandated deference to Delaware law in the absence of a compelling public policy to the contrary. The court went on to state that it could "discern no public policy sufficient to overcome" comity-driven deference to the "internal relationship" between TriQuint and its stockholders and their concern of subjecting a Delaware corporation to "inconsistent regulation in different forums".

This opinion warrants mention because it overturned one of the few cases on which stockholder plaintiffs challenging exclusive forum selection bylaws could rely, and is yet another case permitting the adoption and enforcement of such bylaws. The opinion also validated an exclusive forum selection bylaw adopted a mere two days before the public announcement of a change in control transaction, providing support for the argument that such bylaws need not be enacted on a "clear day" in order to be enforceable.

For further information on this topic please contact [Jason Freedman](#) at Ropes & Gray LLP's San Francisco office by telephone (+1 415 315 6300) or email (jason.freedman@ropesgray.com). Alternatively, contact [Martin J Crisp](#) at Ropes & Gray LLP's New York office by telephone (+1 212

AUTHORS

[Jason
Freedman](#)



[Martin J Crisp](#)



596 9000) or email (martin.crisp@ropesgray.com). The Ropes & Gray website can be accessed at www.ropesgray.com.

Endnotes

(1) *Roberts v TriQuint Semiconductor, Inc*, 358 Or 413 (Or 2015).

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