

Delaware Chancery Court applies *Corwin* standard and makes sale subject to business judgement rule

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On October 12 2016 the Delaware Court of Chancery, in another application of *Corwin* (for further details please see "[Three decisions consider effect of stockholder approval on challenged transactions](#)"), granted the defendant board members' motion to dismiss an action by former shareholders of OM Group, Inc seeking damages following the closing of the sale of OM Group to Apollo Global Management for \$1 billion. (1)

Vice Chancellor Slight, following his decision in *Auspex* (for further details please see "[Three decisions consider effect of stockholder approval on challenged transactions](#)"), held that because an overwhelming majority of disinterested stockholders had voted to approve the merger, the business judgement rule applied, rather than enhanced scrutiny as argued by the plaintiffs, and the plaintiffs had failed to allege that the transaction amounted to waste.

Under *Corwin* the business judgement rule applies if the approval of a majority of disinterested stockholders is the product of a fully informed, uncoerced vote. However, the business judgement rule would not apply if facts were not disclosed that would have been material to a voting stockholder. The plaintiffs argued that the proxy was misleading in three material respects:

- It omitted information regarding a competing bid;
- It omitted information about a director's alleged conflicts of interest; and
- It omitted information about the timing of the board's discovery of certain purported conflicts of one of the company's financial advisers and the evolution of that financial adviser's fee structure.

The vice chancellor analysed each item in turn and found that none were materially misleading to stockholders and that the plaintiffs had failed to present facts that undermined the validity of the stockholder vote. Because the plaintiffs had not alleged or argued that the merger amounted to waste, the presumption of the business judgement rule resulted in the dismissal of the complaint.

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Endnotes

(1) *In re OM Group, Inc Stockholders Litig*, CA 11216-VCS (Oct 12 2016).

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