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Delaware Guidance for Grants to Directors

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April 14, 2017 — In *In re Investors Bancorp Inc. Stockholder Litig.*, the Delaware Court of Chancery recently provided directors of Delaware corporations with a clear guideline to fend off stockholder challenges to awards they make to themselves under a stockholder-approved compensation plan.

A board's decision to authorize board-level and executive compensation awards to its members pursuant to a compensation plan, which the court acknowledged are "inherently self-dealing transactions," will nonetheless be afforded the deference of the business judgment rule (and view the prior stockholder approval of such a plan as ratification of any subsequent awards that are consistent with the limitations in such plan) so long as the details of the applicable compensation plan and stockholder approval of such plan meet two requirements.

First, the plan should include specific and definitive limitations on the compensation for directors. The court based this requirement on its prior decision in *In re 3COM Corp. Shareholders Litigation* where the compensation plan contained meaningful, specific limits on all awards of compensation to all director beneficiaries, and such restrictions differed from the limitations on awards to other plan beneficiaries.

Second, prior to the date of the grants, the plan should be approved by the vote of well informed and independent stockholders. Here, the court relied on its recent decision in *Calma on Behalf of Citrix Systems, Inc. v. Templeton* and noted Delaware's Supreme Court decision in *Corwin v. KKR Financial Hldgs. LLC* when it held that a vote by fully-informed and disinterested stockholders on an economic transaction, such as a compensation plan, will not be second-guessed by the court, even if, as in the present situation, the awards were "quite large" and "above the level of compensation of directors" at other peer companies but nevertheless within the limits of the plan.

With these two factors in place, the court ruled that the stockholders' approval of the plan would be deemed a ratification of any awards made under that plan and the derivative action was dismissed.

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