

Delaware Supreme Court: Business Judgment Rule Applies to Two-Step Section 251(h) Mergers If the Target Corporation's Fully-Informed, Uncoerced Stockholders Tender a Majority of the Company's Shares in a First-Step Tender Offer

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Pursuant to Section 251(h) of the Delaware General Corporation Law, companies may complete two-step mergers without a target company stockholder vote if the acquiring corporation consummates a first-step tender offer.

On February 9, 2017, the Delaware Supreme Court adopted the Chancery Court's reasoning in affirming a June 2016 Chancery Court decision holding that the business judgment rule applies to two-step Section 251(h) mergers if the target corporation's fully-informed, uncoerced stockholders tender a majority of the company's shares in a first-step tender offer. *In re Volcano Corp. Stockholder Litig.*, 2017 WL 563187 (Del. 2017) (Strine, C.J.). The Chancery Court found that "the acceptance of a first-step tender offer by fully informed, disinterested, uncoerced stockholders representing a majority of a corporation's outstanding shares in a two-step merger under Section 251(h) has the same cleansing effect under" the Delaware Supreme Court's decision in *Corwin v. KKR Fin. Holdings*, 125 A.3d 304 (Del. 2015)^[1] "as a vote in favor of a merger by a fully informed, disinterested, uncoerced stockholder majority." *In re Volcano Corp. Stockholder Litig.*, 143 A.3d 727 (Del. Ch. 2016) (Montgomery-Reeves, V.C.).^[2]

^[1] Please [click here](#) to read our prior discussion of the Delaware Supreme Court's decision in *Corwin*.

^[2] Please [click here](#) to read our prior discussion of the Chancery Court's decision in *Volcano*.

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