

[Securities Regulation Daily Wrap Up, TOP STORY—Del. Ch.: Door slammed on disclosure settlement by merging home-search companies, \(Jan. 22, 2016\)](#)

Securities Regulation Daily Wrap Up

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By [Amy Leisinger, J.D.](#)

The Delaware Chancery Court denied approval of a proposed settlement of a stockholder class action challenging Zillow, Inc.'s acquisition of Trulia, Inc. in a stock-for-stock merger. The parties' proposal to enter into a "disclosure settlement" under which the companies would supplement the proxy materials disseminated before the vote on the transaction in exchange for the plaintiffs dropping their motion and releasing claims on behalf of the proposed class of stockholders is not fair or reasonable, according to the court. "None of the supplemental disclosures were material or even helpful" and thus provide no meaningful consideration for a release of claims, the court stated (*In re Trulia, Inc. Stockholder Litigation*, January 22, 2016, Bouchard, A.).

Disclosure settlement. After the merger was announced, four plaintiffs filed complaints alleging that Trulia's directors breached their fiduciary duties in connection with the transaction and that Zillow, as well as the new merger entity, aided and abetted those breaches. In late 2014, the parties entered into agreement-in-principle to settle the litigation in exchange for certain disclosures to supplement those contained in the proxy materials, and the stockholders approved the transaction. Thereafter, the parties executed a stipulation reiterating the terms of the agreement and containing a release of claims and sought court approval of the settlement.

The court noted that disclosure settlements of this type have become common in resolving the lawsuits routinely filed in response to acquisition announcements. However, the court continued, a class action affects the legal rights of absent class members, and the fairness of a settlement must be independently examined before approval. The court found that is type of settlement rarely provides stockholders with any genuine economic benefits and threatens potentially valuable claims while providing for disclosure that may only theoretically allow stockholders to be better informed.

A court must evaluate "the reasonableness of the 'give' and the 'get,'" that is, what class members will take away in exchange for ending litigation, the court explained. The supplemental disclosures made in this case are not material and offered no real benefit to Trulia stockholders, the court found. There is no adequate consideration to warrant the "give" of releasing claims as to the defendants, according to the court, and the proposed settlement is neither fair nor reasonable with regard to Trulia's stockholders.

Future actions. The court further opined that disclosure claims arising in deal litigation should be adjudicated outside of a proposed settlement so that consideration of the merits of the claims can be made "without the defendants' desire to obtain an often overly broad release hanging in the balance." The court will be vigilant in assessing the "give" and "get" with respect disclosure settlements, and supplemental disclosures should address a plainly material misrepresentation or omission while the proposed release of claims should be narrowly drawn, the court concluded.

The case is [No. 10020-CB](#).

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Companies: Trulia, Inc.; Zillow, Inc.; Zebra Holdco, Inc.

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