

Securities Regulation Daily Wrap Up, MERGERS AND ACQUISITIONS— Del. Ch.: Delaware common stockholders may waive statutory appraisal rights, (Aug. 15, 2019)

Securities Regulation Daily Wrap Up

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By [Anne Sherry, J.D.](#)

Delaware's corporate statute does not explicitly prohibit the contractual modification or waiver of appraisal rights.

The Delaware Court of Chancery upheld a waiver of common stockholders' appraisal rights contained in a stockholders' agreement. In this case of first impression, the court cited the reasoning of an earlier chancery decision upholding a contract that essentially obviated preferred stockholders' right to an appraisal. Under the specific circumstances present in this case, Delaware law permits waiver of appraisal rights as long as the contract is clear and unambiguous ([Manti Holdings, LLC v. Authentix Acquisition Company, Inc.](#), August 14, 2019, Glasscock, S.).

The sole stockholders of Authentix Inc. petitioned for appraisal of their shares in connection with a 2017 transaction. In 2018 the Court of Chancery found that the petitioners had waived their appraisal rights by executing the stockholders' agreement as a condition of a 2008 merger. The petitioners successfully moved for reargument, however, on the basis that the Chancery Court had not decided the predicate issue of whether a stockholder can validly waive appraisal rights under Delaware law.

Although the court found this motion for reargument "well-taken," it came down on the side of the respondent corporation on the legal issue. The stockholders' agreement was a clear, unambiguous contract among sophisticated parties, including the petitioners, who owned the entire corporation to be merged. The court cited a case in which the Chancery Court upheld a contract that fixed the "fair value" of any merger at a set price, effectively amounting to a waiver of the right to appraisal. The reasoning that a party may waive its rights as long as the waiver is clear is found elsewhere in Delaware law, the court continued.

The Delaware General Corporation Law does not explicitly prohibit contractual modification or waiver of appraisal rights, nor does it require a party to exercise its statutory appraisal rights. Therefore, a modification or waiver supplements, rather than contradicts, the DGCL.

The court cautioned that its holding is limited to the specific facts: the sole stockholders of a private company, as fully informed and sophisticated investors, entered into a contract that clearly and unambiguously waived appraisal rights. The court did not decide whether a waiver would be enforceable in other circumstances.

The case is [No. 2017-0887-SG](#).

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Companies: Manti Holdings, LLC; Authentix Acquisition Company, Inc.

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