

Stinson M&A Attorneys Analyze Delaware Court Ruling Invalidating Stockholder Agreement in *New York Law Journal*

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Stinson LLP Partners [Stephen Quinlivan](#) and [Kelly Stout](#) authored an article for the *New York Law Journal*, "Delaware Court Invalidates Portions of Stockholder Agreement."

The article explores the altered landscape for public company mergers and acquisitions (M&A), joint ventures and investor relations, in light of a recent Delaware Court of Chancery decision that found certain stockholder agreement provisions to be unlawful. The court ruled portions of a company's stockholder agreement violated Section 141(a) of Delaware law, which governs corporate management powers.

The attorneys say although the decision only applies to entities in Delaware, its reach will be significant and can be interpreted, under the most restrictive interpretation, to upend long standing market practices.

"While practitioners should be mindful of the fiduciary duty implications of violating Section 141(a), the stockholder agreement in this particular instance placed extreme limitations on the ability of the board to make decisions on behalf of the company, much more than those found in a typical stockholder agreement," the attorneys write. "Despite these extreme limitations, the court noted that similar provisions that acquirers may wish to include in stockholder agreements between the acquirer and a target company could be restructured as preferred stock rights set forth in a certificate of designations or included as other provisions of a certificate of incorporation."

The attorneys say M&A practitioners and the market in general will continue to develop alternatives permissible under Delaware law. "As such, the case does not appear to be a road block to many common M&A activities."

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Quinlivan represents clients in M&A, securities regulation and offerings, ESOPs, REITs, international transactions and financing matters. He assists clients on Securities Exchange Commission reporting matters, advises boards of directors in corporate governance and liability issues and works with litigation teams defending officers and directors.

Stout advises on securities laws and corporate governance and is trusted by private equity funds and businesses in key industries to structure their most complex financings and transactions. He has significant experience with domestic and cross-border M&A deals, capital markets transactions and complex joint ventures.

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