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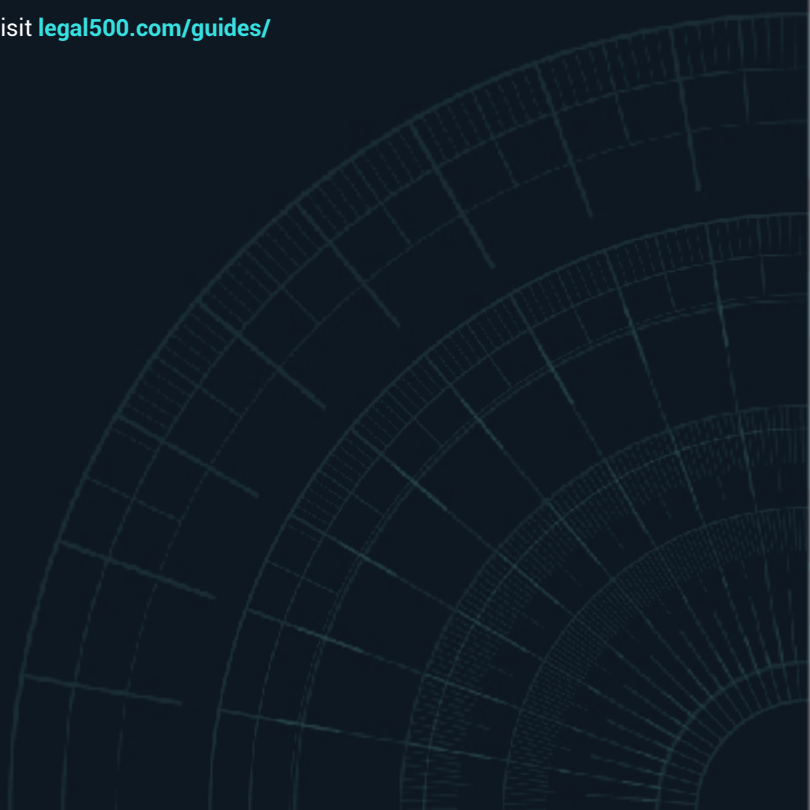
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“DExit” in Review

Prior to 2024, Delaware’s status as the leading jurisdiction of incorporation for U.S. corporations was effectively unquestioned. The depth of Delaware’s caselaw and the expertise of its specialist judiciary were frequently touted by academics and practitioners alike as unrivaled resources which, among other incentives, made the incorporation of large corporations in Delaware a nearly foregone conclusion.

In 2024, several rulings in the Court of Chancery and Delaware Supreme Court led many to question and seek alternatives to Delaware’s dominance. These decisions were viewed as challenging the legitimacy of common market practices in major corporate actions and placing greater scrutiny on transactions involving controlling stockholders, unsettling corporations who had long relied on the predictability of Delaware jurisprudence. The Delaware General Assembly acted quickly, enacting significant legal changes to accommodate existing market practices and offering greater certainty to corporations with major stockholders, with Senate Bill 313 (“SB 313”) and Senate Bill 21 (“SB 21”) being signed into law in July 2024 and March 2025, respectively. These legislative responses did not, however, halt the so-called “DExit” movement, which encouraged Delaware-incorporated companies to re-domesticate to other jurisdictions.

Other states were eager to accommodate this movement, with Nevada and Texas in particular moving aggressively to position themselves as alternatives to Delaware. Both Nevada and Texas have made significant changes to their corporate law in recent years to encourage re-domestications, attracting high-profile moves not only from Delaware but from other states as well – as recently illustrated by Exxon Mobil’s contemplated re-domestication from New Jersey to Texas. In addition to creating specialized business courts, both states have, among other matters, codified expansive business judgment rule protections for directors and clarified the requirements of director independence in potentially conflicted transactions.

As we will cover in greater detail below, the constitutionality of SB 21 was challenged this past year as well – although the Delaware Supreme Court ultimately upheld SB 21 in its recent decision on *Rutledge v. Clearway Energy Group LLC* on February 27, 2026. With the constitutionality of SB 21 now settled, this article reviews the series of decisions and events that led us to this point and examines whether there was any real substance to the DExit movement after all.

“Market Practice” Amendments

One of the earliest – and loudest – calls for DExit began with a social media post. On January 30, 2024, following Chancellor Kathaleen McCormick’s ruling in *Tornetta v. Musk* (“*Tornetta I*”) invalidating his historic \$56 billion pay package as CEO of Tesla in a stockholder derivative suit, Elon Musk took to X with a simple message: “Never incorporate your company in the state of Delaware”.

The ensuing debate amongst practitioners was fueled by other contemporaneous Court of Chancery decisions that raised concerns regarding the predictability of Delaware jurisprudence and its rejection of established market practices. Three key decisions (two of which are summarized below and one of which

was summarized in greater detail in our 2024 Legal 500 “Hot Topic” article, Post-Crispo World) were largely responsible for these concerns.

West Palm Beach Firefighters' Pension Fund v. Moelis & Co.

At issue in *Moelis* was a stockholder agreement between Ken Moelis, the founder and CEO of Moelis & Company (Moelis & Co.), on the one hand, and Moelis & Co., on the other. Among other matters, the stockholder agreement required the Moelis & Co. board to obtain Moelis's approval before taking a wide range of actions and granted Moelis significant rights over the composition of the board and its committees. The plaintiff, a stockholder of Moelis & Co., sued on the grounds that this stockholder agreement deprived the board of a significant portion of its authority in contravention of Section 141(a) of the Delaware General Corporation Law (“DGCL”), which requires a Delaware corporation to be managed by or under the direction of a board of directors except as set forth in the corporation's certificate of incorporation. In its defense, Moelis & Co. pointed to the fact that many corporations, especially those which had recently undergone IPOs, were party to similar arrangements that preserved the relative control of pre-IPO stockholders. In its February 2024 decision, the Court of Chancery found certain provisions of the stockholder agreement unenforceable despite recognizing that such provisions were not atypical, noting pointedly that while “other corporations [had] entered into similar stockholder agreements with favored internal actors”, “market practice is not law”. The decision concluded that, “[w]hen market practice meets a statute, the statute prevails” and seemingly invited the Delaware General Assembly to respond to the decision.

Sjunde AP-Fonden v. Activision Blizzard, Inc.

In another February 2024 decision, the Court of Chancery held that it was reasonably conceivable that the Activision board had violated Section 251(b) of the DGCL by approving a draft of a merger agreement that omitted certain key terms, including the disclosure schedules and the certificate of incorporation of the surviving corporation, at the time of approval. In finding that a board must approve an “essentially complete version” of the merger agreement, the ruling challenged another market practice whereby boards approve nearly-final versions of the definitive agreement and parties finalize disclosure schedules between board approval and execution of such definitive agreement.

Legislative Response

Taking up the Court of Chancery's invitation in *Moelis*, the Delaware General Assembly, with input from the Corporation Law Council of the Delaware State Bar Association, responded quickly to restore legal certainty for market practices impacted by *Moelis* and *AP-Fonden*, as well as to address concerns which had been raised by the Court of Chancery's 2023 ruling in *Crispo v. Musk*, which had raised questions regarding the availability of lost premium damages. SB 313 was introduced in the Delaware Senate on May 23, 2024 and was signed into law less than two months later.

Among other changes, SB 313 addressed *Moelis* by amending DGCL Section 122 to allow a corporation to enter into stockholder agreements of the type at issue in that case. SB 313 also alleviated the uncertainties raised by *AP-Fonden* by providing that a board may approve a merger agreement in “substantially final” form if all of the material terms are either known or determinable through other information or materials presented to the board, and that this requirement could be satisfied by a

ratification of a prior approval. The bill also addressed AP-Fonden by specifying that the disclosure schedules to a merger agreement are not deemed part of the agreement for the purposes of the DGCL, and by expressly providing that the merger agreement adopted by a target company's board of directors need not include the certificate of incorporation of the surviving corporation except where stock of the surviving corporation constitutes part of the merger consideration.

Delaware Jurisprudence on Controlling Stockholder Transactions

Prior to the passage of SB 21, Delaware law related to the standard of review governing transactions involving controlling stockholders was largely defined through a series of cases. In *Kahn v. M & F Worldwide Corp.* (“MFW”), the Delaware Supreme Court held that a controlling stockholder buyout would receive business judgment deference – rather than entire fairness review – if it was conditioned ab initio on both the approval of an adequately empowered special committee of independent directors and the uncoerced, fully-informed vote of a majority of the disinterested stockholders. For a decade, the question remained whether both of these cleansing mechanisms were required in all conflicted controlling stockholder transactions or only in squeeze-out mergers.

The Delaware Supreme Court resolved that question in April 2024 in *In re Match Group, Inc. Derivative Litigation*, which arose from InterActiveCorp's 2020 reverse spinoff of its controlled subsidiary, Match. The Court held that both MFW procedures were necessary to obtain business judgment deference in any transaction in which the controlling stockholder “stands on both sides of a transaction and receives a non-ratable benefit”, although either protection alone would suffice to shift the burden of proof to the plaintiff.

The Match ruling shortly followed the Court of Chancery's January 2024 decision in *Tornetta I*, in which Chancellor McCormick found that despite controlling only 21.9% of Tesla's stock, Elon Musk was a controlling stockholder of Tesla “[a]t least as to this transaction” through the combination of his equity stake, his corporate roles in Tesla and his close personal relationships with the directors tasked with negotiating on Tesla's behalf. Later that year, ruling on a motion to revise the *Tornetta I* opinion (“*Tornetta II*”), Chancellor McCormick held that Match foreclosed the possibility of stockholder ratification of Musk's compensation package ex post facto by extending the ab initio requirement to all transactions in which a controlling stockholder receives a non-ratable benefit.

Match, *Tornetta I* and *Tornetta II* signaled to the business community that Delaware courts viewed major stockholders, including those with minority ownership combined with board and management roles commonly seen in dynamic, founder-led companies, with suspicion. Match and *Tornetta II* confirmed that corporations were required to implement the full procedural safeguards of MFW across a broad range of transactions with such stockholders, even in cases of transactions supported by disinterested stockholders. At the same time, MFW itself appeared to become more difficult to satisfy. In two cases in early 2024 involving the “fully informed” majority-of-the-minority vote required under MFW, the Delaware Supreme Court applied a standard of materiality for proxy statement disclosure that surprised many observers in its breadth and focused particular scrutiny on perceived financial advisor conflicts.

Legislative Response

As it had the year before, in 2025, the Delaware General Assembly again responded to the business

community's criticisms of recent judicial rulings. SB 21, introduced in February 2025 and signed into law the following month, addressed the controlling stockholder concerns head-on. In addition to codifying when a stockholder will be deemed to be a “controlling stockholder” in response to the framework established by *Tornetta I* and previous cases, the bill's most sweeping changes were to the MFW and Match framework. SB 21 created two safe harbor mechanisms that restore business judgment deference in the context of a transaction involving a controlling stockholder – (1) approval in good faith by the majority of the disinterested directors serving on a fully informed special committee of at least two board members, each of whom the board has determined is disinterested with respect to the transaction or (2) approval by an informed, uncoerced majority of votes cast by disinterested stockholders, with the transaction conditioned on such approval at or before the time it is submitted to stockholders. Notably, the first mechanism is structured such that the presence of one or more directors who are later found to be conflicted does not “taint” the committee's approval of a controlling-stockholder transaction, provided that any such director was determined by the board in good faith at the time of the committee's formation to be disinterested and that a majority of the committee members who are in fact disinterested vote to approve the transaction. The second mechanism, meanwhile, requires only a majority of votes cast by disinterested stockholders, another departure from the prior MFW standard (which required a majority vote of all disinterested stockholders, regardless of how many ballots were cast). For most controlling stockholder transactions, either safe harbor alone is sufficient although take-private transactions by controlling stockholders still require both prongs to be satisfied.

SB 21 also set clearer standards for the determination of director disinterestedness and extended a heightened presumption of disinterestedness to directors of corporations with stock listed on a national securities exchange who are determined by the board to satisfy the criteria for independence set forth by such exchange. Furthermore, SB 21 expressly provides that the designation, nomination or vote in the election of a director by a person with a material interest in a transaction is not, of itself, evidence that such director is not disinterested.

Coming on the heels of SB 313, discussed above, SB 21 marked the second intervention in as many years by the Delaware legislature to directly address recent judicial decisions. It is worth noting that SB 21 did not immediately assuage the fears of all members of the business community. In July 2025, venture capital firm Andreessen Horowitz published an article explaining that it was leaving Delaware to reincorporate in Nevada, citing an appearance of “bias[] against technology startup founders and their boards” in Delaware courts together with innovations in Nevada, including a statutory business judgment rule, restrictions on stockholder inspection rights and newly-established business courts. The firm specifically highlighted SB 21 as an action which “fail[s] to take full measure of the problem.” Earlier that year, Bill Ackman expressed similar concerns about judicial activism, indicating that he would reincorporate the management company of his flagship Pershing Square fund from Delaware to Nevada.

Rutledge v. Clearway Energy Group LLC

The constitutionality of SB 21 was promptly challenged. In June 2025, the Court of Chancery certified two questions to the Delaware Supreme Court, both arising out of a derivative suit brought against the majority stockholder of Clearway Energy Inc.

The first question asked whether SB 21's safe harbors unconstitutionally divest the Court of Chancery of

its equitable jurisdiction to hear fiduciary duty cases. The plaintiff argued that because SB 21 provides that a transaction satisfying the safe harbors may not be “the subject of equitable relief, or give rise to an award of damages”, the legislature had effectively shut the door on potential stockholder claims. The defendants countered that the Court of Chancery still decides whether the safe harbors apply in any given case and that defining the contours of fiduciary duty is something the legislature has always had the power to do. The second question was whether SB 21 could apply retroactively to claims that had arisen before the bill was enacted—or whether doing so unconstitutionally took away rights that stockholders had previously acquired.

On February 27, 2026, the Delaware Supreme Court agreed with the defendants on both questions, holding that SB 21 does not violate Delaware’s constitution. Practitioners widely welcomed the decision as confirming that the protections created by SB 21 would stand. With the legal landscape now largely settled, the question becomes whether the DExit movement has had any real substance behind it. The following section reviews the companies that did indeed leave – or attempted to leave – Delaware, the motivations of such companies and the broader context of incorporation in and re-domestication from Delaware.

DExit Data in Review

Based on our research, DExit is overwhelmingly a phenomenon of founder-led and controlled companies concentrated in the technology sector. Only nine of the 49 DExiting companies we identified neither had a major stockholder or founder-leader nor principally did business in cryptocurrency, social media, AI, biotechnology, digital marketing, cloud computing or e-commerce.

DExit Data 2024-2026

The available data on the size and prominence of the DExit movement is conflicting. While sources generally agree that Delaware remains a leading jurisdiction of incorporation for both new and re-domesticating companies alike, there is some dispute and much uncertainty as to whether the allegedly increased volume of re-domestications from Delaware represents a meaningful challenge to Delaware’s status or a minor aberration.

Reviewing public filings between January 1, 2024 and March 1, 2026, we identified 49 Delaware-incorporated public corporations which had either submitted a re-domestication proposal to stockholder vote or had such a proposal approved by written consent. In particular, we identified nine cases in which stockholders rejected, or the board withdrew, re-domestication proposals, 29 cases (including two cases where a re-domestication proposal initially failed in 2024 but passed in 2025) in which such companies received stockholder approval to re-domesticate elsewhere, and eight cases in which a re-domestication was approved by written consent. As of March 1, 2026, five companies have filed proxy statements for upcoming stockholder meetings including re-domestication proposals, suggesting that even with time to digest the passage and implementation of SB 21, some boards were still actively considering DExit prior to Rutledge.

On balance, the data we collected support the common hypothesis that if a company leaves Delaware, it is more likely than not to be a “founder-led” corporation or a corporation with a major stockholder. Of the 41 corporations which submitted to stockholders at least one re-domestication proposal between January

2024 and March 2026, 21 were either “founder-led” (i.e., a founder of the company served as both CEO or President and a director) or had a single stockholder or group which controlled over one-third of the voting power of the corporation's outstanding stock. It is perhaps unsurprising that large stockholders existed in at least six of the eight cases in which re-domestication proposals were approved by written consent.

Participants in the DExit movement are also clustered in high-technology industries. Of the 41 companies mentioned above which submitted at least one re-domestication proposal to a stockholder vote, 22 were principally involved in the cryptocurrency, social media, AI, biotechnology, digital marketing, cloud computing or e-commerce businesses. Of the eight cases of re-domestication approved by written consent, half involved companies principally involved in cryptocurrency, cloud computing or e-commerce. Only nine of the 49 DExiting companies we identified neither had a major stockholder or group or founder-leader nor principally did business in one of the above-mentioned sectors. The strong sectoral concentration of these companies suggests that network effects may have a role in the DExit movement, a possibility underscored by the unrivaled prominence of the highest-profile DExit advocates, Elon Musk and Andreessen Horowitz, in the technology sector.

In 2024, nine DExit re-domestications were put to a stockholder vote, of which five passed and four failed. In 2025, boards submitted to stockholders 26 such proposals, including two resubmissions of 2024 proposals, with one being withdrawn, four failing and 21 being approved. That year a further seven DExit proposals were approved by written consent. This momentum seems to have carried into 2026, and as of March 1, a further three DExit proposals have been approved by stockholders through a vote, one such proposal has been approved by written consent and an additional five DExit proposals have been submitted to upcoming meetings. These data suggest that SB 21 alone has not stemmed the tide of companies leaving Delaware.

The continued stream of corporate departures may be explained by statements provided by re-domesticating companies themselves. Despite the Delaware General Assembly's legislative response, of the reasons cited in support of re-domestication proposals in proxy and information statements, one of the most common is a preference for a “statute-focused” approach over Delaware's reliance upon “judicial interpretation”. This trepidation may reflect a belief that the judicial climate in states eager to entice new re-domestications will be friendlier to corporate boards and major stockholders than that of Delaware. The arguments advanced by re-domesticating companies are, however, also consistent with a view that such companies have been eagerly awaiting the judicial validation of SB 21 provided by Rutledge, although such companies will also remain interested in the judicial interpretation of the safe harbors themselves at the trial-court level.

It is important to contextualize the data presented here: multiple sources indicate that the overall rate of corporate formation in Delaware has been unaffected by the DExit movement, and a comprehensive database of entity formations across the U.S. shows that 2025 saw a drastic increase in Delaware's total share of new U.S. incorporations. Even IPOs appear largely unaffected by the controlling stockholder cases. The DExit movement addresses concerns which are most relevant to a relatively small but highly dynamic set of the hundreds of thousands of entities formed and re-domesticated across the U.S. every year, and the data reflect this.

Looking Forward

Although the strength of the market's reaction to Rutledge remains to be seen, we expect Delaware to retain its position as the leading jurisdiction of incorporation over the short- and medium-terms. The Rutledge decision provides a meaningful answer to the concerns of the companies most likely to be considering re-domestication from Delaware. The passage of SB 21 in 2025, like SB 313 the year before, demonstrated the Delaware General Assembly's commitment to addressing market concerns arising out of judicial decisions. The Delaware Supreme Court's ruling in Rutledge should further signal that both the Delaware General Assembly's authority to address investor concerns and the greater clarity and scope of action afforded by SB 21 are here to stay.

Rutledge does not, however, resolve all open questions. SB 21 remains subject to judicial interpretation and the manner in which the Court of Chancery applies the new safe harbors will undoubtedly be closely watched. Certain companies may prefer a “statute-focused” approach such as in Nevada and Texas over Delaware's reliance on “judicial interpretation”, particularly if those jurisdictions' business courts establish track records of predictability. On the other hand, it remains to be seen whether states taking a more statutory approach will be able to maintain the legislative attention required to adapt to new developments without the flexibility of Delaware's caselaw-based approach.

The views expressed herein are solely the personal views of the authors and do not represent the views of Cravath, Swaine & Moore LLP or legal advice.

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