

Chapman Client Alert

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Current Issues Relevant to Our Clients

Delaware Supreme Court Reverses Chancery Court Holding and Upholds Strict Compliance with Advance-Notice Bylaw Provisions

On January 13, 2020, the Delaware Supreme Court reversed, in part, an appeal from the Delaware Court of Chancery in *BlackRock Credit Allocation Income Trust v. Saba Capital Master Fund, Ltd.*, (Del. Jan. 13, 2020) (available [here](#)). The Delaware Supreme Court held that the contention that the supplemental nominee questionnaire was overbroad did not excuse Saba Capital Master Fund, Ltd. (“Saba”) from responding in a timely manner, and Saba’s failure to do so allowed BlackRock Credit Allocation Income Trust and BlackRock New York Municipal Bond Trust (collectively, the “BlackRock Funds”) to deem Saba’s nominees ineligible.

Background

Saba delivered a timely director nomination notice to the BlackRock Funds under each fund’s respective bylaws. The boards of trustees of the BlackRock Funds requested additional information with respect to the nominees submitted by Saba, and referenced generally the appropriate section of the bylaws, which included a requirement for Saba to respond within five business days. The request for additional information did not recite the required deadline for a response. Saba failed to respond within the required deadline, and accordingly, the BlackRock Funds informed Saba that the nominees were ineligible.

The Court of Chancery granted Saba’s request for mandatory injunctive relief based on its breach of bylaws claim because the BlackRock Funds’ questionnaire “went too far.” The court found that the questionnaire as a whole was not reasonably requested or necessary to determine whether the nominees met the relevant requirements under the bylaws. As such, the court reasoned that the BlackRock Funds overstepped their authority while simultaneously requiring strict compliance from Saba, and therefore granted the injunction.

Delaware Supreme Court Holding

The Delaware Supreme Court overruled this holding on appeal, concluding that under the clear language of the bylaws Saba had an obligation to respond to the supplemental information request before the expiration of the deadline. The court stated that the bylaws are contracts and the rules of contract interpretation apply. Further, the bylaws were adopted in 2010 on a “clear day,” well before the current controversy.

The court ruled that “although we agree with the Court of Chancery’s interpretation of the [b]ylaws, we disagree with the court’s decision to excuse Saba’s non-compliance with the deadline Accordingly, we hold that Saba’s nominations are deemed ineligible under [the bylaws] due to their failure to timely respond to the [BlackRock Funds’] request for supplemental information.”

The court noted that the record did not suggest that the questionnaire’s over-breadth precluded a timely response, and noted that Saba did not object to the questionnaire before the deadline passed. Rather, the court stated that “[a] reasonable reading of the record is that Saba misread the [b]ylaws and did not think it had to respond to the follow-up request within five business days, and that the other justifications were after-the-fact excuses.” Further, the court stated that the bylaws clearly provided that the boards of the BlackRock Funds could request supplemental information regarding their director nominee, and “Saba, as a sophisticated corporate entity, should have understood that, and its failure to respond does not justify disregarding the deadline.”

The court further reasoned that it did not want to set a precedent wherein a shareholder could let a clear and unambiguous deadline in an advance-notice bylaw pass without response. Specifically, the court reasoned that by letting the deadline pass without raising objection, Saba risked disqualification of its nominees and undercut any challenges it later made to the supplemental information request. The court therefore refused to adopt a rule that would allow election-contest participants to ignore a clear deadline and then, without having raised any objection, offer after-the-fact reasons for their noncompliance, reasoning that such rule would create uncertainty in the electoral setting. Such

after-the-fact inquiries could frustrate the purpose of advance-notice bylaws, which are designed to permit orderly meetings and election contests.

Accordingly, Saba was required to respond timely to the request for supplemental information, and the court reversed the Court of Chancery's holding rendering Saba's director nominees ineligible.

Takeaway

The Delaware Supreme Court noted that ideally the BlackRock Funds' request for supplemental information would have more clearly identified which questions related to the bylaws'

requirements and more clearly referenced the deadline to respond to the supplemental information request. A company should carefully review any shareholder nominations or proposals for compliance with their bylaws and may require compliance and further information thereunder, but should consider providing notice of any applicable deadlines to respond.

For More Information

If you would like further information concerning the matters discussed in this Client Alert, please contact a member of the Corporate and Securities Department or the Investment Management Group or visit us online at chapman.com.

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