



## ***In Re Anaplan: Corwin* Cleansing Applied to Stockholder Claim That Board Transferred Deal Value to Management**

In *In Re Anaplan, Inc. Stockholders Litigation* (June 21, 2024) (“**In Re Anaplan**”), the Delaware Court of Chancery (the “**Court**”) dismissed a putative class action against former officers and directors of Anaplan, Inc. (“**Anaplan**”) alleging that they breached their fiduciary duties by awarding equity grants to management and employees in violation of a merger agreement and thus enabling Thoma Bravo, the acquirer, to renegotiate Anaplan’s merger and reduce the merger consideration payable to stockholders (the “**Claim**”). The Court extensively analyzed Anaplan’s stockholder approval procedure for the renegotiated merger and, relying on the *Corwin* doctrine, held that the Claim must be dismissed on the basis that the stockholder vote approving the renegotiated merger was fully informed and neither situationally nor structurally coercive, thereby applying *Corwin* cleansing to stockholder claims related to the reduction of the acquisition consideration.

### **Background**

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In March 2022, Anaplan entered into a merger agreement with Thoma Bravo, which valued Anaplan at approximately \$10.7 billion (the “**Original Merger Agreement**”). The Original Merger Agreement contained a heavily negotiated provision that limited the equity awards that Anaplan could issue between signing and closing of the merger transaction. After the signing of the Original Merger Agreement, Anaplan approved equity grants to its directors, officers and employees on multiple occasions and continued to do so even after it surpassed the \$105 million cap on equity grants that was set by the Original Merger Agreement. Alleging that Anaplan violated terms of the Original Merger Agreement, Thoma Bravo sought to renegotiate the Original Merger Agreement.

Thoma Bravo and Anaplan eventually agreed to amend the terms of the Original Merger Agreement (the “**Revised Merger Agreement**”), reducing the merger consideration by \$400 million. Anaplan then issued a supplemental proxy to Anaplan’s stockholders containing detailed information about the Revised Merger Agreement, which the stockholders were asked to vote on (the “**Supplemental Proxy**”). Subsequently, 98.8% of stockholders approved the merger under the Revised Merger Agreement (the “**Merger**”) and the Merger closed the following day.

Pentwater Capital Management LP, a former stockholder (the “**Claimant**”), on behalf of a putative class of former Anaplan stockholders, proceeded to challenge the Merger, alleging that certain directors and officers of Anaplan breached their fiduciary duties by causing Anaplan to breach the Original Merger

Agreement by issuing excessive equity grants and this breach, according to the Claimant, led Thoma Bravo to renegotiate and reduce the merger price. The Claimant sought to recover damages equal to the delta between the Original Merger Agreement and the Revised Merger Agreement prices.

## Court's Analysis

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Without delving into the Claimant's substantive claims that involved "fascinating questions of fiduciary law," the Court, applying the *Corwin* doctrine, held that the Claim must be dismissed on the grounds that the stockholder vote approving the Merger was informed and uncoerced.

The Court began its analysis by discussing the principles established in *Corwin*. Under *Corwin*, the Delaware Supreme Court held that the more deferential business judgment rule standard of review would apply, in a transaction that is not subject to the more stringent entire fairness standard of review, if it is approved by a fully informed and uncoerced vote of disinterested stockholders. In other words, a fully informed and uncoerced stockholder vote would provide cleansing effect for board actions. The Court noted that as the Claimant did not allege the Merger was subject to the entire fairness review, *Corwin* cleansing would be available and would apply if all requirements are satisfied.

The Court then examined whether Anaplan's stockholder vote met the *Corwin* requirements of being fully informed and uncoerced.

- > **Fully Informed:** The Court dismissed the part of the Claim that the stockholders lacked material information to approve the Revised Merger Agreement. The Court found that the disclosures in connection with the Revised Merger Agreement provided to stockholders in the form of the Supplemental Proxy was adequate to satisfy *Corwin*. In particular, the Court noted that directors must disclose all material information fully and fairly, but "material" does not mean everything and the omission or inclusion of a particular fact is generally left to management's business judgment. The stockholders had the necessary material information, the Court has concluded, most importantly, the reduced merger consideration, to make an informed decision whether to vote in favor of the Revised Merger Agreement or to continue to dispute the issue with Thoma Bravo and risk losing the deal.
- > **Uncoerced:** The Court also dismissed the Claimant's assertion that the stockholder vote was coerced because the merger was either situationally or structurally coercive. The Court proceeded to explain why the stockholder vote, in its view, was neither situationally nor structurally coercive:
  - o **Situational Coercion:** The Revised Merger Agreement still reflected a substantial premium both to Anaplan's share price at the time and to its expected share price if stockholders voted not to approve the Merger, and thus the stockholders had a choice between various financial outcomes that were good, better and best. Such choice did not constitute situational coercion, which arises when the status quo is so unattractive that it prevents a stockholder vote from operating as a clear endorsement of a transaction.
  - o **Structural Coercion:** The Court stated that the concept of structural coercion, which occurs when a vote is arranged so that external factors unrelated to the transaction likely swayed the stockholders' decision, should not be used to nitpick stockholder votes to invalidate ratification. The Claimant's argument that the stockholder vote should not have any cleansing effect because it is bound up in the stockholders' desire to receive a premium for their shares must also be rejected because the *Corwin* decision precisely intended to establish a legal

framework that would respect a stockholder's informed decision. The Court also noted that the Claimant did not allege other factors such as self-dealing that might warrant calling upon the principle of structural coercion.

## Our Take

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*In Re Anaplan* is a curious case. Effectively, Anaplan breached the merger agreement and awarded a significant amount of equity grants to management and employees that, not surprisingly, led Thoma Bravo to reduce the merger consideration by the same amount. And yet, the Court has concluded that it had to use the business judgment rule standard of review (i.e. to defer to the Board's judgment) and dismiss the Claim given that stockholders approved the Revised Merger Agreement with the reduced merger consideration on a fully informed and uncoerced basis.

The case offers a comprehensive examination of the *Corwin* requirements of a fully informed and uncoerced stockholder vote. In prior cases, courts have focused on what constitutes a fully informed vote under *Corwin*. The *In Re Anaplan* opinion's in-depth analysis of structural and situational coercion, in particular in the context of stockholders' approval of a merger transaction with a reduced price, provides important guidance on the coercion element of the *Corwin* requirements. The Court did emphasize that the analysis of the *Corwin* requirements is fact-specific: as teased at the conclusion of its opinion, with a different set of facts, the Claim might have survived a motion to dismiss.

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## Key Contacts



**George Casey**  
Global Chairman of Corporate  
New York  
+1 212 903 9300  
[george.casey@linklaters.com](mailto:george.casey@linklaters.com)



**Heiko Schiwiek**  
Partner  
New York  
+1 212 903 9599  
[heiko.schiwiek@linklaters.com](mailto:heiko.schiwiek@linklaters.com)



**Pierre-Emmanuel Perais**  
Partner  
New York  
+1 212 903 9046  
[pierre-emmanuel.perais@linklaters.com](mailto:pierre-emmanuel.perais@linklaters.com)



**Clara Pang**  
Partner  
New York  
+1 212 903 9436  
[clara.pang@linklaters.com](mailto:clara.pang@linklaters.com)



**Gregory Gewirtz**  
Partner  
New York  
+1 212 903 9502  
[gregory.gewirtz@linklaters.com](mailto:gregory.gewirtz@linklaters.com)



**Josh Feit**  
Counsel  
New York  
+1 212 903 9185  
[joshua.feit@linklaters.com](mailto:joshua.feit@linklaters.com)



**Yiting Du**  
Counsel  
New York  
+1 212 903 9217  
[yiting.du@linklaters.com](mailto:yiting.du@linklaters.com)



**Jihe Kim**  
Associate  
New York  
+1 212 903 9122  
[jihe.kim@linklaters.com](mailto:jihe.kim@linklaters.com)



**Catherine Yuen**  
Associate  
New York  
+1 212 903 9024  
[catherine.yuen@linklaters.com](mailto:catherine.yuen@linklaters.com)

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