

PUBLICATION

Delaware Supreme Court Reverses Moelis Decision: Stockholder Agreement Challenge Barred by Laches

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The Delaware Supreme Court, sitting en banc, unanimously reversed the Court of Chancery's decision in *Moelis & Co. v. West Palm Beach Firefighters' Pension Fund* on January 20, 2026, upholding key governance provisions in a stockholder agreement. This alert summarizes the ruling and its implications for companies, investors, and private equity sponsors utilizing governance provisions in stockholder agreements.

Key Takeaways

Timeliness Is Critical. The decision underscores that stockholders seeking to bring facial challenges to governance arrangements must act promptly. Full disclosure of stockholder agreement provisions at the time of adoption will likely start the limitations clock, and delays beyond the analogous state statute of limitations may be deemed presumptively unreasonable under the equitable doctrine of laches.

Void Acts Remain a Narrow Category. By focusing on corporate power rather than procedural method, the Court narrowed the circumstances in which governance provisions will be deemed void and therefore immune from equitable defenses. Provisions are void only if the corporation could not lawfully adopt them through any authorized mechanism.

As-Applied Challenges Remain Available. While facial challenges may be time-barred, stockholders may still bring as-applied challenges based on specific circumstances that arise in the future.

Review Existing Agreements. Companies and investors with existing stockholder agreements should consider reviewing those agreements in light of both Section 122(18) and this decision to determine whether any changes may be warranted to maximize enforceability and reduce litigation risk.

Section 122(18) Provides a Clear Path Forward. For stockholder agreements entered into after August 1, 2024, Section 122(18) provides clear statutory authorization for a broad range of governance provisions, offering greater certainty for deal structuring.

Background

In 2014, Moelis & Company, a Delaware corporation and publicly traded investment bank, executed a stockholder agreement in connection with its initial public offering. The agreement granted Kenneth Moelis, the company's founder and CEO, through his controlled entity, significant governance rights. These rights included pre-approval in more than 18 specified categories of corporate actions, such as incurring debt above certain thresholds, issuing equity, appointing or removing officers, entering into material contracts, and amending governance documents. The agreement also provided rights relating to board composition, including the right to designate a majority of director nominees, influence board size, and determine committee composition.

Court of Chancery's February 2024 Decision

In February 2024, Vice Chancellor Travis Laster issued a 131-page opinion holding that several provisions of the stockholder agreement were facially invalid under Section 141(a) of the Delaware General Corporation Law

(DGCL). Section 141(a) requires that the corporation's business and affairs be managed by or under the direction of its board of directors, except as otherwise provided by the DGCL or the corporation's certificate of incorporation.

The Court of Chancery applied a two-step framework. First, it determined whether the challenged provisions constituted part of the corporation's "internal governance arrangement" (as opposed to an external commercial agreement). Second, applying the test from *Abercrombie v. Davies*, it evaluated whether the provisions had "the effect of removing from directors in a very substantial way their duty to use their own best judgment on management matters." The court concluded that the pre-approval requirements were "so all-encompassing" that they effectively "rendered the Board an advisory body," and declared several provisions facially invalid. However, the court upheld certain provisions, including the founder's right to designate directors and the nomination requirement. The Court of Chancery subsequently awarded the plaintiff \$6 million in attorneys' fees.

Legislative Response: DGCL Section 122(18)

Following the Court of Chancery's decision, the Delaware General Assembly enacted DGCL Section 122(18), effective August 1, 2024, expressly authorizing corporations to enter into stockholder agreements containing governance provisions like those challenged in *Moelis*, provided the provisions would be permissible if included in the certificate of incorporation and do not violate other mandatory provisions of Delaware law. Although Section 122(18) applies retroactively, the amendments have no effect on litigation completed or pending before their effective date and therefore did not factor into the Supreme Court's analysis.

Delaware Supreme Court's January 2026 Reversal

The Delaware Supreme Court, in a unanimous opinion authored by Justice Traynor, reversed the Court of Chancery on procedural grounds without reaching the merits of whether the challenged provisions violated Section 141(a).

Voidable, Not Void. The Supreme Court rejected the Court of Chancery's holding that provisions allegedly conflicting with Section 141(a) are void *ab initio* and therefore immune from equitable defenses. Instead, the Court held that the proper inquiry is whether the corporation could lawfully accomplish substantially the same governance arrangements through another authorized mechanism, such as revision of the charter provisions. Because no mandatory Delaware law prohibited the company from adopting the challenged provisions through a charter amendment, the Court concluded the provisions were voidable, not void, and therefore subject to equitable defenses, including laches.

Rejection of the Continuing Wrong Doctrine. The Court also rejected the plaintiff's argument that the company's continued operation under the stockholder agreement constituted an ongoing statutory violation. The Supreme Court held that the only alleged wrongful act was the agreement's execution in 2014 and that later consequences of that discrete act do not restart the limitations period. Because the agreement was executed and fully disclosed at the time of the IPO, and complete relief was available at that time, the Court concluded the plaintiff's claim accrued then.

Time-Barred Under Laches. Having determined that the most analogous Delaware statute of limitations was three years, the Court ruled that the plaintiff's facial challenge, brought nearly nine years after execution and public disclosure, was untimely under the equitable doctrine of laches. The Court also vacated the \$6 million attorneys' fee award.

Merits Not Addressed. Importantly, the Delaware Supreme Court expressly declined to decide whether the challenged provisions facially violated Section 141(a). Instead, the Court left open the possibility of future as-

applied challenges based on specific circumstances, noting that its holding that the plaintiff's facial challenge was time-barred does not prevent Moelis stockholders from bringing as-applied claims in the future.

Conclusion

The Delaware Supreme Court's reversal of the *Moelis* decision, together with the enactment of Section 122(18), reinforces Delaware's commitment to private ordering and the enforceability of stockholder agreements containing governance provisions. While the merits of what constitutes an impermissible restraint on board authority under Section 141(a) remain unsettled, the procedural landscape is now clearer: facial challenges must be brought promptly, and parties may rely on Section 122(18) for future agreements. We encourage clients with questions about existing or proposed stockholder agreements to reach out to discuss how these developments may affect their governance arrangements.