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Exclusive Forum Bylaws Gain Momentum

California Superior Court Enforces Delaware Exclusive Forum Bylaw, Consistent With Decisions in Several Other States; Little Negative Shareholder Reaction Seen in 2014 Proxy Season for Companies That Unilaterally Adopted Exclusive Forum Bylaws

SUMMARY

Following the Delaware Court of Chancery's decision in July 2013 upholding the validity of exclusive forum bylaws, a number of corporations, including over two dozen S&P 500 companies, amended their bylaws to include these provisions, and the provisions were commonly included in the charters or bylaws of companies in initial public offerings. Many public companies, however, determined to take a wait-and-see approach, in order to assess whether non-Delaware courts would enforce the bylaw and whether companies that adopted the bylaw received negative investor feedback in the 2014 proxy season or otherwise.

To date, all state courts that have considered the enforceability of exclusive forum provisions have upheld them, including courts in California, New York, Illinois and Louisiana. In addition, while proxy advisory firms and some institutional investors and investor groups remain generally opposed to these provisions, shareholders more broadly do not appear to have resisted their adoption or punished directors or companies that have adopted them. In light of these developments, and the significant benefits that an exclusive forum bylaw can afford to companies by reducing costs of multi-jurisdictional litigation, companies should give serious consideration to adopting such a bylaw.

Taking into account the developments over the past year, this memorandum examines:

- The nature and benefits of exclusive forum provisions;
- The treatment of exclusive forum provisions by non-Delaware courts;

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- The manner in which proxy advisory firms and shareholders have reacted to the adoption of such provisions; and
- Some key considerations relating to the drafting and adoption of such provisions.

BACKGROUND

A. EXCLUSIVE FORUM PROVISIONS

On June 25, 2013, the Delaware Court of Chancery delivered its opinion in *Boilermakers Local 154 Ret. Fund v. Chevron Corp.*¹ In *Boilermakers*, the court held that a corporation's board of directors, if empowered by the corporation's charter to adopt bylaws, may validly adopt an "exclusive forum" provision through a unilateral bylaw amendment.² Exclusive forum provisions (such as the one in *Boilermakers*) designate specific courts as the exclusive venues for four types of litigation:

- derivative actions;
- actions asserting a breach of fiduciary duty owed by a director, officer, or other employee to the corporation or its shareholders;
- actions under the Delaware General Corporation Law ("DGCL"); and
- actions asserting claims under the internal affairs doctrine.

Exclusive forum provisions are intended to discourage forum shopping by plaintiffs and the practice of litigating similar or identical claims in multiple jurisdictions. The benefits of such provisions to corporations can be significant. They remove the need to hire multiple counsel and make filings in different jurisdictions. They reduce the risk of inconsistent outcomes. And they allow corporations to identify and approach courts that have particular expertise in corporate matters, such as, for example, the Delaware Court of Chancery.

Importantly, exclusive forum provisions do not usually foreclose a board's ability to litigate outside the chosen forum; typically the chosen forum is only the default forum in the absence of the board's decision to the contrary.

B. THE BOILERMAKERS DECISION

In its opinion in *Boilermakers*, the Delaware Court of Chancery examined the validity of exclusive forum provisions adopted by two corporations, Chevron and FedEx. The provisions had been adopted as bylaw amendments by the board of directors without seeking the consent of shareholders. The Court noted that each corporation's certificate of incorporation permitted the board to unilaterally amend the bylaws and held that exclusive forum bylaws related to a procedural matter (namely the regulation of where

¹ 73 A. 3d 934 (Del. Ch. 2013).

² For a detailed discussion of the opinion in *Boilermakers*, see our publication, dated June 28, 2013, entitled "[Delaware Court of Chancery Rules that Forum Selection Bylaws are Valid and Presumptively Enforceable Under Delaware Law](#)".

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shareholders might file suit)³ and were therefore within the authority of the board to enact. Observing that Delaware law and the corporations' certificates of incorporation specifically put shareholders on notice that bylaws might be amended at any time, the Court held that shareholders had no vested right to contractually prohibit the amendment of bylaws to adopt an exclusive forum provision.⁴ Thus, an exclusive forum provision adopted by a board authorized to unilaterally adopt bylaws was valid and binding upon shareholders.

The Court supported its conclusions by pointing to the existence of protections available to shareholders of corporations that adopted exclusive forum provisions through unilateral bylaw amendments. The Court noted that shareholders retain the right to remove or modify such provisions by modifying the bylaws. Shareholders also retain the right to challenge the specific application of an exclusive forum bylaw if it is used inequitably or for an improper purpose in a particular case.⁵

Notably, however, the *Boilermakers* decision addressed only the facial validity of exclusive forum bylaws. The Court made it clear that the enforceability of an exclusive forum bylaw with respect to a particular dispute would have to be assessed on a case-by-case basis under the reasonableness standard applicable to any contractual choice of forum clause.⁶

In October 2013, the plaintiffs in the *Boilermakers* case voluntarily dismissed their appeal of the Court of Chancery's decision; as a result, the question did not reach the Delaware Supreme Court.

C. THE TREND TOWARDS EXCLUSIVE FORUM PROVISIONS AFTER *BOILERMAKERS*

Since the *Boilermakers* decision, a significant number of Delaware corporations have adopted exclusive forum provisions.⁷ The trend is not limited to Delaware—such provisions have also been adopted by corporations in Florida, Maryland, Nevada, Oregon, Pennsylvania, South Carolina, Texas and Virginia. In particular, it has become relatively common for companies undertaking initial public offerings to include exclusive forum provisions in their charters before going public.

³ *Boilermakers* at 951.

⁴ *Id.* at 955.

⁵ *Id.* at 954.

⁶ See *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972).

⁷ By one count, in the period between June 25, 2013 and October 31, 2013 as many as 112 Delaware corporations adopted or announced plans to adopt exclusive forum bylaws. See Claudia H. Allen, *Trends in Exclusive Forum Bylaws: They're Valid, Now What?*, The Conference Board Governance Center, January 2014 at 2, available [here](#).

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While the *Boilermakers* decision increased the prevalence of exclusive forum provisions, these provisions had already seen some growth in prior years, concurrently with the marked increase in shareholder litigation, particularly relating to mergers.⁸

According to one study in early 2014, 94% of U.S. mergers and acquisitions in 2013 over \$500 million resulted in litigation, with an average of 6.2 lawsuits per deal, while the same percentage of mergers and acquisitions valued at over \$100 million were litigated, with an average of five lawsuits per deal.⁹ By contrast, in 2007, only 53% of public company deals over \$500 million resulted in shareholder litigation.¹⁰ Also significantly, 62% of mergers and acquisitions in 2013 were litigated in more than one court, with the most active courts being the Delaware Court of Chancery; the courts of New York County, NY; Santa Clara County, CA and Harris County, TX. The trend in favor of the adoption of exclusive forum bylaws after 2010 appears to correlate with this increase in the volume and multi-forum character of shareholder litigation.

EXCLUSIVE FORUM PROVISIONS IN NON-DELAWARE COURTS

Following the *Boilermakers* decision, courts in at least four states have enforced exclusive forum provisions in favor of Delaware courts. These include courts in three states – New York, Illinois and, most recently, California – in which a large number of public companies are headquartered.

- In *Hemg Inc. v. Aspen University*,¹¹ among other claims, defendants sought to rely on an exclusive forum clause in favor of the Delaware Court of Chancery in urging the dismissal of six derivative actions in the New York Supreme Court for New York County against certain directors for breach of fiduciary duty, waste of assets, and dilution of shareholder equity. The New York Supreme Court agreed with *Boilermakers*' holding that where a corporation's charter permits the board to unilaterally amend the bylaws, the board may validly amend the bylaws to adopt an exclusive forum provision without seeking the consent of shareholders. The Court enforced the exclusive forum provision and dismissed all six derivative claims.
- An Illinois state court recently reached a similar outcome in *Miller v. Beam Inc.*¹² In *Beam*, the Illinois Chancery Court of Cook County issued an oral ruling granting a motion to dismiss litigation brought in Illinois challenging a merger and enforcing Beam's exclusive forum

⁸ In his 2010 decision in *In re Revlon Inc. Shareholders Litigation*, 990 A.2d 940 (Del. Ch. 2010) Delaware's Vice Chancellor, J. Travis Laster had suggested that boards could promote efficiency and add value by adopting exclusive forum provisions in their corporate charters.

⁹ Robert M. Daines & Olga Koumrian, *Shareholder Litigation Involving Mergers and Acquisitions*, Cornerstone Research—Review of 2013 Litigation, February 2014, available at <http://www.cornerstone.com/Search?searchtext=Shareholder+Litigation+Involving+Mergers+and+Acquisitions>.

¹⁰ Robert M. Daines & Olga Koumrian, *Shareholder Litigation Involving Mergers and Acquisitions—February 2013 Update*, Cornerstone Research, February 2013, at 3, available at <http://www.cornerstone.com/Search?searchtext=Shareholder+Litigation+Involving+Mergers+and+Acquisitions>.

¹¹ 2013 WL 5958388 (Supreme Court, New York, November 4, 2013).

¹² No. 2014 CH 00932 (March 5, 2014).

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provision in favor of Delaware. The plaintiffs sought to rely on the California case of *Galaviz v. Berg*,¹³ where the federal District Court for the Northern District of California declined to enforce Oracle's exclusive forum bylaw because the bylaws had been unilaterally amended by Oracle's board after the plaintiffs bought Oracle stock and after the alleged wrongdoing had occurred. The Illinois Chancery Court held that *Boilermakers* was a "more persuasive" decision than *Galaviz* and that it was reasonable for Beam, which was incorporated in Delaware but headquartered in Illinois, to limit litigation expenses to shareholders by confining litigation to a single venue. The *Beam* Court also noted that although the bylaw was adopted after the merger proposal was made, Beam's charter provisions, which permitted directors to unilaterally amend the bylaws, had been adopted well before the merger proposal.

- In *Genoud v. Edgen Group*,¹⁴ Edgen, a Delaware corporation, was sued in Louisiana for certain fiduciary claims. Edgen filed a motion to dismiss in Louisiana on the basis of an exclusive forum provision in its charter in favor of Delaware. Edgen also sought an anti-suit injunction in the Delaware Court of Chancery, seeking to enjoin the action in Louisiana. However, Vice Chancellor Laster refused to issue the anti-suit injunction because it was questionable whether the Delaware court had personal jurisdiction over the Louisiana plaintiff and because there were concerns of comity for the Louisiana Court. Vice Chancellor Laster also noted that the *Boilermakers* decision had assumed that the exclusive forum provision would first be reviewed by the non-Delaware court, and not by the court specified in the exclusive forum provision.¹⁵ Ultimately, however, the Louisiana Court enforced Edgen's exclusive forum provision.
- Most recently, and perhaps most significantly, a California court not only upheld the *Boilermakers* decision but also appeared to suggest that *Galaviz* was no longer good law. In *Groen v. Safeway Inc.*,¹⁶ defendants sought to have the Superior Court of California, Alameda County, dismiss four class actions filed in California by shareholders of Safeway against the company, its directors and others because seven suits arising out of the same facts were pending in Delaware's Court of Chancery and because Safeway's bylaws designated the Delaware Court of Chancery as the "sole and exclusive forum" for actions for breaches of fiduciary duties by directors and officers. In enforcing the exclusive forum clause, the Superior Court of California observed that *Galaviz* had been decided before *Boilermakers*, and that the record did not support the allegation that the bylaws were adopted after the wrongdoing.¹⁷

While most state courts have not yet had an opportunity to consider the question, these post-*Boilermakers* cases relating to exclusive forum provisions in non-Delaware courts demonstrate a judicial willingness to honor exclusive forum bylaws. The *Safeway* decision may be particularly favorable for companies seeking to adopt exclusive forum bylaws because it not only affirms the validity of *Boilermakers* but appears to disfavor the ruling in *Galaviz*, the primary contrary authority to *Boilermakers* in California.

¹³ 763 F.Supp.2d 1170 (N.D. Cal. 2011).

¹⁴ No. 625,244 (19th Jud. Dist. Ct., East Baton Rouge, La., Jan. 17, 2014).

¹⁵ Telephonic Hearing on Plaintiff's Motions for Expedited Proceedings and for Temporary Restraining Order and Rulings of the Court at 41, *Edgen Group Inc. v. Genoud*, No. 9055-VCL (Del. Ch. Nov. 5, 2013).

¹⁶ No. RG14716641 (Order dated May 14, 2014).

¹⁷ *Id.* at 2.

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As *Edgen's* example suggests, it is not clear that Delaware courts will support efforts by Delaware corporations to enjoin existing litigation in non-Delaware courts. As Vice Chancellor Laster's observations regarding *Edgen's* application for an anti-suit injunction indicate, the *Boilermakers* decision may be more valuable as guidance for non-Delaware courts on the nature of exclusive forum provisions under Delaware law rather than as the basis for the aggressive assertion of jurisdiction by Delaware courts. However, if the trend of enforcement of exclusive forum provisions by non-Delaware courts continues, the requirement to litigate this gating question outside of Delaware may become less of a burden.

REACTIONS TO EXCLUSIVE FORUM PROVISIONS

A. PROXY ADVISORS AND INSTITUTIONAL INVESTORS

The reactions of proxy advisory firms and many institutional investors to exclusive forum provisions range from outright disapproval to very limited approval based on specific circumstances. Proxy advisors' views on exclusive forum provisions are especially important because they are relied upon by a number of institutional investors in voting on the adoption or repeal of such provisions.

One prominent proxy advisor, Institutional Shareholder Services Inc. ("ISS") has stated that it will review proposals to add or remove exclusive forum bylaws on a case-by-case basis. In making its determination, ISS will consider: (i) whether the company employs certain corporate "best practices" (an annually elected board, a majority voting standard for uncontested director elections and the absence of a non-shareholder approved "poison pill"); and (ii) based on disclosures in its proxy statement, whether the company has been materially harmed by shareholder litigation outside the jurisdiction of its incorporation.¹⁸

Notwithstanding this stated case-by-case approach, ISS has consistently recommended voting against exclusive forum bylaws. In 2012, Amalgamated Bank LongView Funds submitted shareholder proposals urging the repeal of exclusive forum bylaws at four corporations. ISS recommended a vote for repeal in each instance. It is notable, however, that while two of the corporations (Roper Industries and Superior Energy Services) repealed their bylaws,¹⁹ shareholders voted against repeal by large margins at the two other corporations (Chevron and United Rentals).

Like ISS, Glass Lewis has a stated policy which favors exclusive forum provisions only in very specific circumstances. Glass Lewis will recommend voting for an exclusive forum provision if the corporation (i) has a compelling argument on why the provision is necessary and how the provision would directly benefit shareholders; (ii) provides evidence of abuse of legal process in other, non-favored jurisdictions;

¹⁸ See *2014 U.S. Proxy Voting Summary Guidelines*, January 31, 2014 at 24, available [here](#).

¹⁹ Efforts to exclude shareholder proposals seeking to repeal exclusive forum bylaws from inclusion in the proxy materials have been less successful. The SEC specifically declined to extend no-action relief when Roper Industries sought to exclude one such shareholder proposal from Amalgamated Bank on the basis of Exchange Act Rule 14a-8(i)(7) as a matter relating to the company's ordinary business operations. See *Roper Industries, Inc., SEC No-Action Letter* (March 29, 2012).

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and (iii) otherwise has a record of good corporate governance practices.²⁰ However, Glass Lewis will also recommend a vote against the chair of the corporation's governance committee where the board adopted an exclusive forum provision without shareholder approval in the past year.

In addition, certain shareholders and shareholder groups, including the AFL-CIO and the Council of Institutional Investors ("CII"), continue to urge the repeal of all exclusive forum provisions.²¹ The AFL-CIO has sought the repeal of such provisions to "restore the flexibility shareholders normally enjoy in choosing the forum in which to assert claims of wrongdoing." CII's policies state that "companies should not attempt to restrict the venue for shareowner claims by adopting charter or bylaw provisions that seek to establish an exclusive forum."

B. SHAREHOLDER PROPOSALS ON EXCLUSIVE FORUM PROVISIONS

Companies first received shareholder proposals seeking the repeal of exclusive forum provisions during the 2012 proxy season. As noted earlier, only two such proposals were brought to a vote and each received average support of 37.6% despite ISS's support for such proposals. By contrast, company proposals to adopt exclusive forum provisions received significantly stronger shareholder support in 2012, despite negative ISS recommendations. Of the six company-initiated proposals, four passed with a majority of votes outstanding while five received the support of a majority of votes cast.

In 2013, there did not appear to have been any shareholder proposals seeking the repeal of exclusive forum provisions. However, between January 2013 and May 2014, 14 companies submitted proposals to adopt exclusive forum bylaws, eight of which passed, despite negative recommendations from ISS and six of which are currently pending.²² Seven of the eight have passed with a majority of votes outstanding. These trends suggest that, despite the continued disapproval of proxy advisory firms and some institutional investors, shareholders more broadly may recognize the value of exclusive forum provisions.

In Annex A to this memorandum, we have examined 32 S&P 500 corporations which adopted exclusive forum bylaws after the *Boilermakers* decision. Of these, 28 have already held their annual meetings for 2014. These companies did not appear to suffer adverse repercussions in terms of negative votes or recommendations on directors due to their adoption of the bylaws.²³

²⁰ See Glass Lewis & Co., *Proxy Paper Guidelines 2013 Proxy Season*.

²¹ *Council of Institutional Investors Corporate Governance Guidelines*, Section 1.9; *AFL-CIO Proxy Voting Guidelines*, Section D.16.

²² Proposals were passed at Halcon Resources Corporation; PTC Inc.; Asbury Automotive Group, Inc.; First Financial Holdings, Inc.; Cesca Therapeutics Inc.; Heritage-Crystal Clean, Inc.; Gilead Sciences, Inc. and Overstock.com, Inc. Proposals are pending at Westlake Chemical Corporation; Community Health Systems, Inc.; Illumina, Inc.; WellCare Health Plans, Inc.; IPC The Hospitalist Company, Inc.; and On Assignment, Inc.

²³ Honeywell International, in its 2014 proxy statement, noted that the "majority of shareowners with whom we spoke were not concerned about the exclusive forum By-Law amendment. With a small

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About a year after the *Boilermakers* decision, it therefore appears that shareholders do not resist the adoption of exclusive forum provisions and do not seek to punish managements that have adopted such provisions.

SOME CONSIDERATIONS FOR EXCLUSIVE FORUM PROVISIONS

The efficacy of exclusive forum provisions in eliminating potentially wasteful multi-forum litigation may lead many corporations to contemplate including such provisions in their bylaws. However, before undertaking a bylaw amendment to adopt an exclusive forum provision, corporations may find it advisable to consider several issues, including the following:

A. BYLAW AMENDMENTS VERSUS CHARTER AMENDMENTS:

Corporations may wish to consider the relative merits of adopting the exclusive forum provision through an amendment to the charter as opposed to an amendment to the bylaws. Bylaws may be unilaterally amended by the board without the shareholders' consent (if authorized to do so by the charter) but may be undone or reversed by a vote of the shareholders. In addition, bylaw changes adopted unilaterally by a board of directors may be subject to greater scrutiny in litigation as to whether the board action, while facially valid, represented an inequitable use of the board's authority, depending on the particular circumstances.²⁴ Charter amendments may be preferred by companies that are planning an initial public offering or companies (such as controlled companies) that are confident in their ability to achieve the necessary shareholder approval, since shareholders would not be able to unilaterally reverse the charter provision.

B. JURISDICTIONAL CARVE-OUTS

Exclusive forum provisions may be more effective where they expressly carve out situations where the chosen forum does not have personal or subject-matter jurisdiction. One approach is to provide that jurisdiction will vest in another (state or federal) court in the same state in such a situation. Such carve-outs from exclusive forum provisions can assist in overcoming plaintiffs' jurisdictional objections.

While additional language could, in theory, be added to further pre-empt defenses as to personal jurisdiction (such as language consenting to service of process through counsel and to personal jurisdiction of the chosen forum in any action brought in any court to enforce the exclusive forum provision), it is not clear that these provide much of an advantage. The *Edgen* decision demonstrates that it is likely that Delaware courts, as a matter of comity, will allow the initial decision as to the enforceability of an exclusive forum provision to occur in the non-Delaware court anyway, and these non-Delaware decisions have thus far come out in favor of corporations.

number of exceptions, our shareowners did not view this amendment as an abridgment of their rights to sue us or otherwise seek redress based on our wrongful acts or omissions.”

²⁴ See *Schnell v. Chris-Craft*, 285 A.2d 437 (Del. 1971).

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C. ALTERNATIVE FORUM CARVE-OUTS

A second kind of carve-out may be desirable to preserve the board's option to litigate in a forum other than the one specified in the exclusive forum provision—one which provides that it is applicable unless the board agrees in writing to litigate elsewhere. The carve-out in favor of an alternative forum enables the board to waive the exclusive forum clause where it is in the corporation's best interests to do so.

D. CONSENT TO JURISDICTION

Some corporations have taken the step of including express language in bylaws affirming that any shareholder purchasing, acquiring or holding shares has consented to the exclusive forum provision.²⁵ While this may have been helpful when the enforceability of these provisions was less clear, such language does not appear to be necessary at this point, since duly adopted bylaws do not require further specific "consent" under Delaware law to be enforceable against both existing and future shareholders.

E. THE TIMING OF THE BYLAW AMENDMENT

California's *Galaviz* decision suggests that a bylaw amendment adopting an exclusive forum provision may be more vulnerable to a successful judicial challenge when it is adopted after the events that give rise to litigation. *Galaviz* appears unlikely to carry much, if any, weight in the future—it was limited to its facts and was rejected in the *Boilermakers*²⁶ and *Safeway* decisions. Nevertheless, a non-Delaware court might be less likely to enforce an exclusive forum bylaw that appears to have been adopted primarily to prevent multi-forum or non-Delaware litigation relating to a specific instance of alleged wrongdoing. It may therefore be prudent to adopt an exclusive forum provision well before any major corporate event that could reasonably be anticipated to give rise to litigation.

F. DOCUMENTATION AND DISCLOSURE

In determining how to vote on an exclusive forum bylaw, proxy advisory firms and institutional investors may sometimes consider whether multi-forum shareholder litigation has adversely affected a corporation. Accordingly, a board of directors adopting an exclusive forum bylaw should ensure that the company's public disclosure appropriately explains the rationale for the adoption, including any excessive costs that the company has incurred from multijurisdictional litigation. A complete written record of such reasons, made available through a company's public disclosures, may also be helpful in potential litigation against the bylaw.

²⁵ See Annex A for several such examples including Ameriprise Financial, Caterpillar and JC Penney.

²⁶ *Boilermakers* at 956. ("Accordingly, the conclusion reached by the United States District Court for the Northern District of California in *Galaviz v. Berg*, a case on which the plaintiffs rely heavily—that board-adopted bylaws are not like other contracts because they lack the stockholders' assent—rests on a failure to appreciate the contractual framework established by the DGCL for Delaware corporations and their stockholders.")

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G. SAMPLE LANGUAGE

While the particular language should be crafted by a company in consultation with counsel and in light of the factors above, the following sample language would be consistent with what other companies have adopted, and what the courts have upheld:

Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation arising pursuant to any provision of the Delaware General Corporation Law or the Certificate of Incorporation or these By-Laws (in each case, as they may be amended from time to time), or (iv) any action asserting a claim against the Corporation or any director or officer or other employee of the Corporation governed by the internal affairs doctrine shall be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware).

Annex A contains information on the bylaw provisions adopted by a number of S&P 500 companies since the *Boilermakers* decision in July 2013.

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ANNEX A

EXCLUSIVE FORUM PROVISIONS ADOPTED BY SELECTED S&P 500 CORPORATIONS

CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
Air Products	Delaware Court of Chancery, or, if the Court of Chancery does not have jurisdiction, the Superior Court of Delaware, or, if the Superior Court does not have jurisdiction, the U.S. District Court for the District of Delaware.	Yes, if company consents in writing.	(i) Any derivative action or proceeding brought on behalf of the company; (ii) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or employee of the company to the company or its stockholders; (iii) Any action asserting a claim arising pursuant to any provision of the DGCL; or (iv) Any action asserting a claim governed by the internal affairs doctrine.	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of the forum provision.
Ameriprise Financial	Delaware Court of Chancery.	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the company; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the company to the company or the company's stockholders; (3) Any action asserting a claim arising pursuant to any provision of the DGCL; or (4) Any action asserting a claim governed by the internal affairs doctrine.	Yes. Persons and entities purchasing or otherwise acquiring or holding any interest in shares of capital stock of the company are deemed to have notice of and consented to the forum provision.
Amgen	Delaware Court of Chancery.	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the company;	No.

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
			<p>(2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the company to the company or the company 's stockholders;</p> <p>(3) Any action asserting a claim arising pursuant to any provision of the DGCL or the certificate of incorporation or bylaws; or</p> <p>(4) Any action asserting a claim governed by the internal affairs doctrine.</p>	
Baker Hughes	<p>Delaware Court of Chancery, except for any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction.</p>	<p>Yes, if company consents in writing.</p>	<p>(1) Any derivative action or proceeding brought on behalf of the corporation;</p> <p>(2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's stockholders;</p> <p>(3) Any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the DGCL or the corporation's certificate of incorporation or bylaws; or</p> <p>(4) Any action asserting a claim against the corporation, its directors, officers or employees governed by the internal affairs doctrine.</p>	<p>No.</p>

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
Caterpillar	Delaware Court of Chancery.	Yes, if company consents in writing.	<p>(1) Any derivative action or proceeding brought on behalf of the corporation;</p> <p>(2) Any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's stockholders;</p> <p>(3) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation arising pursuant to any provision of the DGCL or the corporation's certificate of incorporation or bylaws (as either may be amended from time to time); or</p> <p>(4) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation governed by the internal affairs doctrine.</p>	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the forum provision.
ConocoPhillips	A state court located within the Delaware (or, if no state court located within Delaware has jurisdiction, the federal district court for the District of Delaware).	Yes, if company consents in writing.	<p>(1) Any derivative action or proceeding brought on behalf of the corporation;</p> <p>(ii) Any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee of the corporation to the corporation or the corporation's stockholders;</p> <p>(3) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation arising pursuant to any provision of the DGCL or the certificate of incorporation or the bylaws; or</p> <p>(4) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation</p>	No.

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
			governed by the internal affairs doctrine.	
Darden Restaurants	The Complex Litigation (Business Court) Subdivision of the Civil Division of the 9th Judicial Circuit Court in and for Orange County, Florida (to the extent that the rules of the Business Court Subdivision allow for such case to be brought there), or, if the Business Court Subdivision cannot or otherwise will not take such case, then the general civil division of the 9th Judicial Circuit in and for Orange County, Florida (or, if no state court located within Florida has jurisdiction, the federal district court for the Middle District of Florida).	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the corporation; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee of the corporation to the corporation or the corporation's stockholders; (3) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation arising pursuant to any provision of Florida Law or the corporation's Articles of Incorporation or bylaws (as either may be amended from time to time); or (4) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation governed by the internal affairs doctrine.	No.
DeVry Education	A state or federal court located within the state of Delaware, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants.	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the corporation; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's stockholders; (3) Any action asserting a claim arising pursuant to any	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the forum provision.

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
			provision of the Delaware General Corporation Law; or (4) Any action asserting a claim governed by the internal affairs doctrine.	
Edwards Lifesciences	Delaware Court of Chancery.	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the corporation; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders; (3) Any action asserting a claim arising pursuant to any provision of the DGCL; or (4) Any action asserting a claim governed by the internal affairs doctrine.	Yes. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the forum provision.
Flir Systems	A state court located within the Oregon (or, if no state court located within Oregon has jurisdiction, the federal district court for the District of Oregon).	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the corporation; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee of the corporation to the corporation or the corporation's shareholders; (3) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation arising pursuant to any provision of the Oregon Business Corporation Act or the articles of incorporation or the bylaws; or (4) Any action asserting a claim against the corporation or any	No.

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
			director or officer or other employee of the corporation governed by the internal affairs doctrine.	
FMC Technologies	A state or federal court located within Delaware, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants.	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the corporation; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's stockholders; (3) Any action asserting a claim arising pursuant to any provision of the DGCL; or (4) Any action asserting a claim governed by the internal affairs doctrine.	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the forum provision.
Gap Inc.	Delaware Court of Chancery, in each case subject to the Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein.	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the company; (2) Any action or proceeding asserting a claim of breach of a fiduciary duty owed by any director, officer, employee or agent of the company to the company or the company's shareholders; (3) Any action or proceeding asserting a claim against the company arising pursuant to any provision of the DGCL or the company's certificate of incorporation or the bylaws; or (4) Any action or proceeding asserting a claim against the company governed by the internal affairs doctrine;	No.

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
Honeywell International	A state or federal court located within Delaware, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants.	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the corporation; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's stockholders; (3) Any action asserting a claim arising pursuant to any provision of the DGCL; or (4) Any action asserting a claim governed by the internal affairs doctrine	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of the forum provision.
J C Penney	Delaware Court of Chancery; however, if the Chancery Court lacks jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within Delaware. Note: This exclusive forum bylaw also contain a specific relief clause.	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the company; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the company to the company or the company's stockholders; (3) Any action asserting a claim arising pursuant to the DGCL or the company's certificate of incorporation or bylaws; or (4) Any action asserting a claim governed by the internal affairs doctrine.	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the company shall be deemed to have notice of and consented to the provisions of the forum provision.
Lennar Corp.	Delaware Court of Chancery (or if the Court of Chancery does not have jurisdiction, another Delaware state court, or if no Delaware state court	No.	(1) Any derivative action or proceeding brought on behalf of the corporation by a person other than the corporation; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee of the corporation to the corporation or the corporation's	Yes. Any person who, or entity that, purchases or otherwise acquires an interest in stock of the corporation will be deemed (i) to have notice of, and agree

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
	has jurisdiction, the federal district court for the District of Delaware).		stockholders; (3) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation arising pursuant to any provision of the DGCL or the corporation's certificate of Incorporation or the bylaws; or (4) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation governed by the internal affairs doctrine.	to comply with, the provisions of the exclusive forum provision, and (ii) to consent to the personal jurisdiction of the Delaware Court of Chancery (or if the Court of Chancery does not have jurisdiction, another Delaware state court, or if no Delaware state court has jurisdiction, the federal district court for the District of Delaware) in any proceeding brought to enjoin any action by that person or entity that is inconsistent with the exclusive jurisdiction forum provision.
Marathon Oil	A state or federal court located within Delaware, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants.	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the corporation; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's stockholders; (3) Any action asserting a claim arising pursuant to any provision of the DGCL; or (4) Any action asserting a claim governed by the internal affairs doctrine.	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the forum provision.

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
MeadWestvaco	A state court located within Delaware (or, if no state court located within Delaware has jurisdiction, the federal district court for the District of Delaware).	Yes, if company consents in writing.	<p>(1) Any derivative action or proceeding brought on behalf of the company;</p> <p>(2) Any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee of the company to the company or the company's stockholders;</p> <p>(3) Any action asserting a claim against the company or any director or officer or other employee of the company arising pursuant to any provision of the DGCL, the certificate of incorporation or the bylaws; or</p> <p>(4) Any action asserting a claim against the company or any director or officer or other employee of the company governed by the internal affairs doctrine.</p>	No.
NetApp, Inc.	Delaware Court of Chancery, however, if the Court of Chancery lacks jurisdiction over any such action or proceeding, the forum for such action or proceeding shall be another state or federal court located within Delaware.	Yes, if company consents in writing.	<p>(1) Any derivative action or proceeding brought on behalf of the company;</p> <p>(2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the company to the company or the company's stockholders;</p> <p>(3) Any action asserting a claim arising pursuant to any provision of the DGCL or the company's certificate of incorporation or bylaws; or</p> <p>(iv) Any action asserting a claim governed by the internal affairs doctrine.</p>	Yes. Any person or entity purchasing or otherwise acquiring any interest in the shares of the capital stock of the corporation shall be deemed to have notice of and consented to the provisions of the forum provision.
Newfield Exploration	A state court located within Delaware (or, if no state court located within Delaware has	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the company;	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
	jurisdiction, the federal district court for the District of Delaware), in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants.		(2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the company to the company or the company's stockholders; (3) Any action asserting a claim arising pursuant to any provision of the DGCL or the company's certificate of incorporation or bylaw; or (iv) Any action asserting a claim governed by the internal affairs doctrine.	of capital stock of the corporation shall be deemed to have notice of and consented to the forum provision.
NVIDIA	Delaware Court of Chancery.	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the company; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the company to the company or the company's stockholders; (3) Any action asserting a claim arising pursuant to any provision of the DGCL or the company's certificate of incorporation or bylaws; or (iv) Any action asserting a claim governed by the internal affairs doctrine.	No.
Peabody Energy	A state court located within Delaware (or, to the extent that no state court located within Delaware has jurisdiction, the federal district court for the District of Delaware).	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the company; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the company to the company or the company's stockholders; (3) Any action asserting a claim arising pursuant to any	No.

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
			provision of the DGCL or the company's certificate of incorporation or bylaws; or (iv) Any action asserting a claim governed by the internal affairs doctrine.	
Quest Diagnostics	Delaware Court of Chancery.	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought on behalf of the corporation; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's stockholders; (3) Any action asserting a claim arising pursuant to any provision of the DGCL; or (4) Any action asserting a claim governed by the internal affairs doctrine.	Yes. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the forum provision.
Ralph Lauren	A state or federal court located within the State of Delaware, in all cases subject to the court having personal jurisdiction over the indispensable parties named as defendants therein.	Yes, if company consents in writing.	(1) Any derivative or similar action or proceeding brought on behalf of the corporation; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer of the corporation, employee or agent of the corporation to the corporation or the stockholders; (3) Any action asserting a claim arising pursuant to any provision of the DGCL, the certificate of incorporation or the bylaws; or (4) Any action asserting a claim governed by the internal affairs doctrine.	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the forum provision.

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
Reynolds American	To the fullest extent permitted by law, the state courts of North Carolina or the U.S. District Court for the Middle District of North Carolina. Actions filed in any North Carolina state court shall be subject to designation or assignment to the North Carolina Business Court.	Yes, if company consents in writing.	<p>(1) Any derivative action or proceeding brought on behalf of the corporation;</p> <p>(2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's shareholders;</p> <p>(3) any action asserting a claim arising pursuant to any provision of the North Carolina Business Corporation Act, the bylaws, or the articles of incorporation (as each may be amended from time to time); or</p> <p>(4) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation governed by the internal affairs doctrine.</p>	No.
Safeway	Delaware Court of Chancery, unless the court determines that there is an indispensable party named as a defendant in such action not subject to the personal jurisdiction of the court (and the indispensable party does not consent to the personal jurisdiction of the court within 15 days following such determination) and can be subject to the jurisdiction of another court or forum within the U.S.	Yes, if company consents in writing.	<p>(1) Any derivative or similar action or proceeding brought on behalf of the corporation;</p> <p>(2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer of the corporation, employee or agent of the corporation to the corporation or the stockholders;</p> <p>(3) Any action asserting a claim arising pursuant to any provision of the DGCL, the certificate of incorporation or the bylaws;</p> <p>(4) Any action to interpret, apply, enforce or determine the validity of the by-laws or the certificate of incorporation; or</p> <p>(5) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation</p>	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the forum provision.

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
			governed by the internal affairs doctrine.	
Sandisk	Delaware Court of Chancery.	Yes, if company consents in writing.	(1) Any derivative or similar action or proceeding brought on behalf of the corporation; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer of the corporation, employee or agent of the corporation to the corporation or the stockholders; (3) Any action asserting a claim arising pursuant to any provision of the DGCL; or (4) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation governed by the internal affairs doctrine.	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the forum provision.
Sears Holdings Corp	Delaware Court of Chancery to the fullest extent permitted by law.	Yes, if company consents in writing.	(1) Any derivative or similar action or proceeding brought on behalf of the corporation; (2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer of the corporation, employee or agent of the corporation to the corporation or the stockholders; (3) Any action asserting a claim arising pursuant to any provision of the DGCL; or (4) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation governed by the internal affairs doctrine.	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the forum provision.
Sysco Corp.	A state court located within Delaware (or, if no state court located within Delaware has	Yes, if company consents in writing.	(1) Any derivative or similar action or proceeding brought on behalf of the corporation; (2) Any action asserting a claim of breach of a fiduciary duty	No.

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
	jurisdiction, the federal district court for the District of Delaware).		<p>owed by any director, officer of the corporation, employee or agent of the corporation to the corporation or the stockholders;</p> <p>(3) Any action asserting a claim arising pursuant to any provision of the DGCL, the certificate of incorporation or the bylaws; or</p> <p>(4) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation governed by the internal affairs doctrine.</p>	
US Bancorp	A state court located within Delaware (or, if no state court located within Delaware has jurisdiction, the federal district court for the District of Delaware).	Yes, if company consents in writing.	<p>(1) Any derivative or similar action or proceeding brought on behalf of the corporation;</p> <p>(2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer of the corporation, employee or agent of the corporation to the corporation or the stockholders;</p> <p>(3) Any action asserting a claim arising pursuant to any provision of the DGCL, the certificate of incorporation or the bylaws; or</p> <p>(4) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation governed by the internal affairs doctrine.</p>	No.
Waters Corp.	Delaware Court of Chancery, subject to the court having personal jurisdiction over the indispensable parties named as defendants therein. If the Court of Chancery dismisses any such action for lack of	Yes, if company consents in writing.	<p>(1) Any derivative or similar action or proceeding brought on behalf of the corporation;</p> <p>(2) (2) Any action asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any director, officer of the corporation, employee or agent of the corporation to the</p>	Yes. To the fullest extent permitted by applicable law, any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
	subject matter jurisdiction, such action may be brought in another state or federal court sitting in the State of Delaware.		corporation or the stockholders, creditors or other constituents; (3) Any action asserting a claim arising pursuant to any provision of the DGCL, the certificate of incorporation or the bylaws; (4) Any action to interpret, apply, enforce or determine the validity of the certificate of incorporation or the bylaws of the Corporation; or (5) Any action asserting a claim governed by the internal affairs doctrine.	the forum provision.
Wynn Resorts	8th Judicial District Court of Clark County, Nevada	Yes, if company consents in writing.	(1) Any derivative action or proceeding brought in the name or right of the corporation or on its behalf; (2) Any action asserting a claim for breach of any fiduciary duty owed by any director, officer, employee or agent of the corporation to the corporation or the corporation's stockholders; (3) Any action arising or asserting a claim arising pursuant to any provision of NRS Chapters 78 or 92A or any provision of the articles of incorporation or the bylaws; or (4) Any action asserting a claim governed by the internal affairs doctrine, including, without limitation, any action to interpret, apply, enforce or determine the validity of the articles of incorporation or the bylaws.	Yes. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the corporation shall be deemed to have notice of and consented to the forum provision.
Zimmer Holdings	A state court located within Delaware (or, if no state court located within Delaware has	Yes, if company consents in writing.	(1) Any derivative or similar action or proceeding brought on behalf of the corporation;	No.

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CORPORATION	FORUM	ALTERNATE FORUM PERMITTED	CLAIMS COVERED	JURISDICTIONAL CONSENT
	jurisdiction, the federal district court for the District of Delaware).		<p>(2) Any action asserting a claim of breach of a fiduciary duty owed by any director, officer of the corporation, employee or agent of the corporation to the corporation or the stockholders;</p> <p>(3) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation arising pursuant to any provision of the DGCL, the certificate of incorporation or the bylaws; or</p> <p>(4) Any action asserting a claim against the corporation or any director or officer or other employee of the corporation governed by the internal affairs doctrine.</p>	