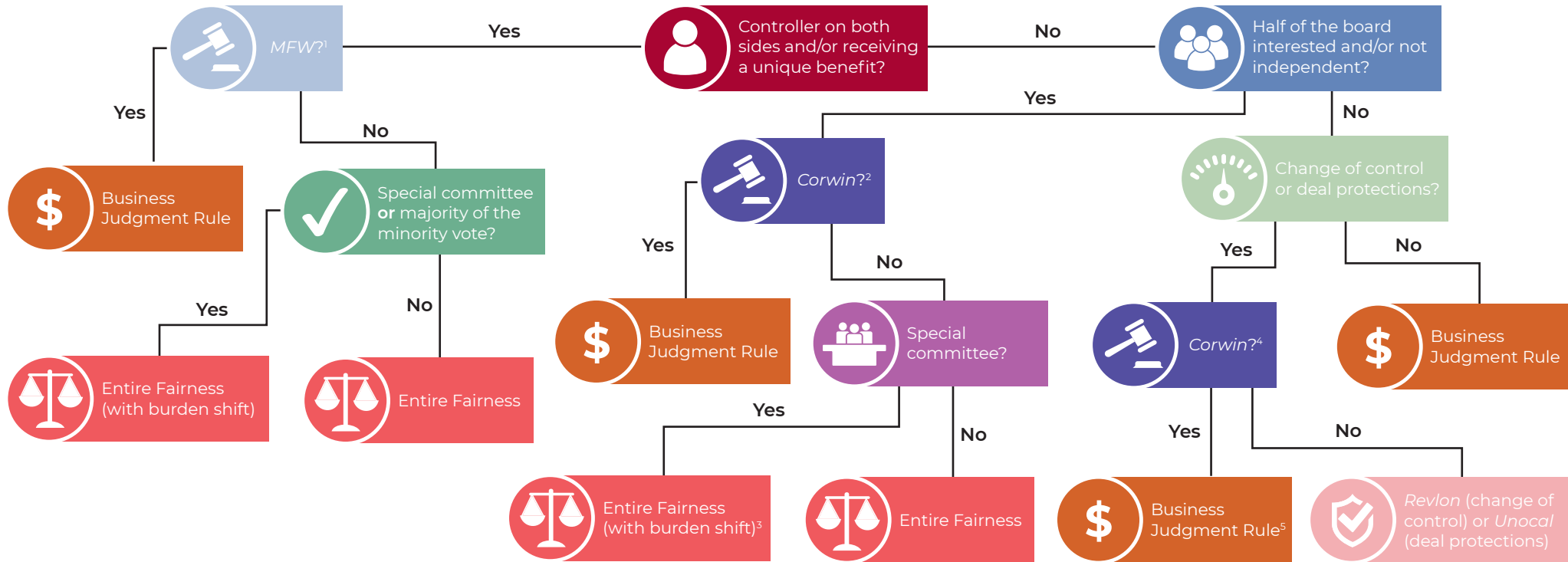


Delaware Standards of Review



Note 1: In *Kahn v. M&F Worldwide Corp.*, 88 A.3d 635 (Del. 2014) (*MFW*), the Delaware Supreme Court held that where a controller agrees upfront, before any negotiations begin, that the controller will not proceed with the transaction without both (1) the affirmative recommendation of an independent and disinterested special committee and (2) the affirmative, fully informed and uncoerced vote of a majority of the minority stockholders, the business judgment rule will apply.

Note 2: In *Corwin v. KKR Financial Holdings LLC*, 125 A.3d 304 (Del. 2015), the Delaware Supreme Court held that where a fully informed, disinterested and uncoerced stockholder majority approves a transaction, the business judgment rule will apply.

Note 3: The Delaware Supreme Court has not definitively ruled that entire fairness review is applicable in this scenario, and there is support for the argument that the business judgment rule should instead be applicable (or, in the case of a change of control or usage of deal protections, *Revlon* or *Unocal*, respectively).

Note 4: In the instance where stockholders are generally disinterested and independent, the *Corwin* "cleansing" vote is the same as the vote required under section 251(c) of the Delaware General Corporation Law.

Note 5: Delaware courts have held that *Corwin* ratification "cleanses" board-level conflicts and *Revlon* breaches, but whether *Unocal* breaches are given the same cleansing effect remains an open question.



Taylor B. Bartholomew
302.777.6581 | bartholomewt@pepperlaw.com



Matthew M. Greenberg
302.777.6585 | greenbergm@pepperlaw.com



Christopher B. Chuff
302.777.6547 | chuffc@pepperlaw.com