ALERT MEMORANDUM

Delaware Court of Chancery Finds 29% Stockholder Qualifies As "Controlling Stockholder" Under SB 21

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One of the principal drivers of Delaware's 2025 legislation to amend Section 144 of the Delaware General Corporation Law (DGCL), commonly referred to as "SB 21," was the widely perceived need to provide greater clarity concerning who constitutes a "controlling stockholder." SB 21 replaced a murky body of caselaw with a bright-line test: a controlling stockholder is one with (a) greater than 50% voting power, (b) 33.3% or more voting power *and* managerial control, or (c) the right to "cause the election" of a majority of the board. As a recent Delaware decision demonstrates, even stockholders holding less than 33.3% voting power can be considered controlling stockholders under SB 21 if they have a contractual right to nominate a majority of the board—even if they have not exercised that right and even if a majority of the board is independent as required by stock exchange rules.

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Background

In 2025, Delaware enacted sweeping reform of its corporate law, which had previously developed largely through caselaw, by amending DGCL § 144. This legislation, commonly referred to as Senate Bill 21 or SB 21, provides safe-harbor protections for transactions involving conflicted fiduciaries, including "controlling stockholders." As part of this legislative shift, the Delaware legislature adopted a clear statutory definition of what constitutes a controlling stockholder to replace what had previously been a "factually intensive, case-specific inquiry into the existence of control . . ."[1] The revised definition limits controlling stockholders to three categories: (a) those with a majority (i.e., greater than 50%) of the corporation's "voting power"; (b) those who hold at least one-third (i.e., 33.3%) of the corporation's voting power *and* exercise managerial control; and (c) those who, by "contract or otherwise," can "cause the election of" a majority of board members.[2] A controlling stockholder designation is significant under Delaware law for a number of reasons, including that non-controlling stockholders do not owe fiduciary duties, and the safe harbors for transactions involving conflicted controlling stockholders contain additional requirements that are not required where the conflicted party is not a controlling stockholder.

While SB 21 was enacted in spring 2025, cases interpreting the new legislation were paused for almost a year as the Delaware Supreme Court considered constitutional challenges. Since the Supreme Court green-lighted SB 21 earlier this year, the Delaware Court of Chancery has begun applying the new safe harbors in cases involving a variety of transactions.

One such case, *In re R1 RCM Inc. Merger Litigation*, concerns an acquisition of R1 RCM Inc. by TA, a joint venture between private equity firm TowerBrook Capital Partners L.P. and Missouri not-for-profit health system Ascension Health Alliance (collectively, the TA Defendants). At the time the acquisition was negotiated and approved, TA held 29.4% of the outstanding shares in R1 RCM, with warrants to purchase additional shares that would grant it 35.7% ownership if fully exercised. In addition, TA entered into an investor rights agreement (the TA Agreement) with R1 RCM, which, among other things, gave TA the right to nominate a majority of R1 RCM's board provided its ownership exceeded 33.3% on a fully diluted basis (i.e., including unexercised warrants)—and R1 RCM was subject to a reasonable efforts obligation to ensure those nominees were duly elected. However, as R1 RCM was listed on the NASDAQ exchange, it was equally required to have a majority of independent directors. TA had not exercised its right to nominate a majority of the board at the time of the acquisition.

In early 2024, New Mountain Capital—another R1 RCM shareholder—sought to take the company private. R1 RCM's board initially rebuffed the offer, and as New Mountain persisted, R1 RCM formed a special committee to consider the company's options. TA ultimately made a competing offer at $14.30 a share, which was recommended to the board and approved over New Mountain's final offer of $14.05 per share. The transaction was subsequently approved by company shareholders holding a majority of outstanding voting power, but was not conditioned on approval by a majority of disinterested stockholders. TA's warrants were exercised in "the briefest of moments" before the transaction closed, so they could be converted into the right to merger consideration.[3]

The Court of Chancery's Decision

Former stockholders in R1 RCM filed suit in September 2025, asserting that TA and its owners breached their fiduciary duties as controlling stockholders of R1 RCM by standing on both sides of the transaction. The TA Defendants moved to dismiss, arguing that TA could not have breached its fiduciary

[1] *In re R1 RCM Inc. Merger Litigation*, 2026 WL 3228733, at *1 (Del. Ch. Oct. 28, 2026) ("*R1 RCM*").

[2] 8 Del. C. § 144(e)(2).

[3] *R1 RCM,* at *14.

duties as it did not qualify as a controlling stockholder under SB 21's new test.

As no other grounds for dismissal were put forward, the Court of Chancery's decision rested on the threshold issue of whether the TA Defendants qualified as controlling stockholders and did not otherwise consider whether they could benefit from DGCL § 144's safe harbor.

Unexercised Warrants Do Not Count In Calculating "Voting Power"

The Court of Chancery first considered plaintiffs' argument that the TA Defendants could qualify as controlling stockholders based on their voting power. While TA's 29.4% holding in outstanding shares was insufficient to satisfy the one-third floor, plaintiffs argued that the calculation of shares owned should include the shares which TA would be entitled to upon exercising its warrants. The Court of Chancery rejected this contention, reasoning that at Delaware common law unexercised warrants do not confer voting power. The plaintiffs argued that TA's own ownership disclosures to the SEC identified the shares TA "beneficially owned" as inclusive of shares issuable on exercise of the warrants, but the Court of Chancery viewed this as distinct from measuring voting power under Delaware law.[4]

The plaintiffs alternatively contended that TA could be properly viewed as having exercised its warrants just prior to the closing of the acquisition, bringing its voting power briefly above 33.3%. Describing that moment as "the mystical singularity of the effective time,"[5] the Court of Chancery reasoned that for purposes of considering whether TA owed and breached fiduciary duties, the time of breach—up to and including the merger agreement being reached—was the operative point at which to consider TA's voting power. As this was before TA's warrants were exercised, the plaintiffs' argument failed.

Contractual Rights Can Trigger Control

The Court of Chancery looked more favorably on plaintiffs' argument that the TA Defendants could qualify as controlling stockholders because of their right to nominate a majority of the members of R1 RCM's board—in conjunction with the R1 RCM board's own reasonable efforts requirement. The parties disputed the degree of contractual control that is required to equate to a right to "cause election" of a board majority: plaintiffs argued the "functional ability to elect nominees" would suffice, while the TA Defendants contended that the election of their nominees would need to be effectively guaranteed.[6] The court sided with plaintiffs, reasoning that a combination of TA's nomination right and the board's reasonable efforts commitment was sufficient. Though TA argued that, practically, once it chose not to nominate a majority of R1 RCM's board, it was not a controlling stockholder for the purposes of its subsequent acquisition, the Court of Chancery held fast. It reasoned that multiple factors, including DGCL § 144's legislative history, confirmed that a defendant "cannot avoid controlling-stockholder status by asserting a lack of transaction-specific control."[7]

The TA Defendants pushed back on two additional fronts. First, the TA Agreement required TA's nominees to be reasonably acceptable to a nominating committee of R1 RCM's board—in addition to requiring compliance with NASDAQ's independent board majority rules. TA reasoned that this sufficiently interfered with its "discretion" to select board nominees as contemplated in the controlling stockholder definition.[8] The Court of Chancery found that both constraints could be accommodated and did not sufficiently impinge on TA's control over the board.

[4] *Id.* at *12–13.
[5] *Id.* at *14.
[6] *Id.* at *15.
[7] *Id.* at *19.
[8] *Id.* at *20.

The TA Defendants advanced an alternative argument that the controlling stockholder definition is simply a "minimum threshold," requiring an additional showing of control at common law.[9] The Court of Chancery reasoned this could not be the case, citing in particular commentary around SB 21 describing the controlling stockholder classification as a "bright-line rule" explicitly intended to provide "greater predictability" over the prior common law framework.[10]

The Court of Chancery therefore concluded that plaintiffs' complaint supported a reasonable inference that TA was a controlling stockholder of R1 RCM. While TA had various other contractual rights under the TA Agreement that conferred TA further control over R1 RCM's board, the Court of Chancery reasoned that SB 21's controlling stockholder definition turned only on the right "to cause the election of directors" to the board—TA's nomination right and the board's reasonable efforts requirement were deemed sufficient as a result.

Key Takeaways

Coming on the heels of other recent Delaware Court of Chancery decisions denying the protection of the safe harbor at the pleading stage,[11] *R1 RCM* shows that Delaware courts will continue to exercise their tools of statutory interpretation even with the greater certainty DGCL § 144 has brought. The Court of Chancery's decision—which made use of various sources, including the commentary of those involved in the drafting process—provides valuable insight for companies considering or reviewing shareholder agreements. A shareholder's percentage of ownership is not all that matters, as it is still possible to be deemed a controlling shareholder even with voting power under 33.3%; provided a shareholder has a board-majority nomination right. However, the Court of Chancery's decision—which credited the R1 RCM board's reasonable efforts obligation as satisfying the controlling stockholder definition in tandem with TA's board-majority nomination right—suggests that a bare nomination right on its own may not be sufficient for controlling stockholder status.

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[9] *Id.* at *23.
[10] *Id.* at *25.

[11] *See In re Cloudflare, Inc. Stockholder Litigation,* 2026 WL 3093369 (Del. Ch. Oct. 16, 2026); *Dodiya v. Franklin*, 2026 WL 2517931 (Del. Ch. Aug. 26, 2026).