

Top-Up Options – Looking Better and Better

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As the percentage of tender offers in friendly transactions has risen in recent years, so too has use of so-called “top-up options.” Yet, despite their prevalence, the validity of top-up options has not been addressed squarely by the Delaware courts and continues to be challenged by the plaintiffs’ bar. However, two separate rulings from the Delaware Court of Chancery this week suggest that the use of top-up options is likely to present little litigation risk.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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