

Delaware Court Declines to Enjoin Sotheby's Annual Meeting

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On May 2, 2014, the Delaware Court of Chancery denied a preliminary injunction motion by activist stockholder Third Point LLC to enjoin Sotheby's annual meeting based on claims that the board breached its fiduciary duties by adopting a stockholder rights plan that has a 20% trigger for passive investors who file on Schedule 13G and a 10% trigger for all other stockholders. Third Point claimed that the board's adoption of—and subsequent refusal to waive the lower trigger in—the rights plan violated the board's fiduciary duties under *Unocal* because Third Point was not trying to obtain corporate control, but rather to run a proxy contest for a minority slate, and the two-tiered rights plan was designed to thwart its efforts. Vice Chancellor Parsons held that Third Point was not reasonably likely to succeed on the merits on such claims, holding that, under *Unocal's* heightened review standard, the board had identified legitimate and legally cognizable threats to the company's corporate policy and effectiveness and that the board's actions were not preclusive of a proxy contest and were proportionate responses to the threats posed.

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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