

## US Corporate Law News: Delaware Supreme Court overturns chancery court precedent on director compensation review

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The Delaware Supreme Court recently held that discretionary decisions by directors regarding self-compensation previously approved by the stockholders are subject to the entire fairness standard rather than the more deferential business judgment rule when the plaintiff stockholders have properly alleged breach of fiduciary duty. In doing so, the Delaware Supreme Court expressly rejected the distinction between “meaningful limits” and “generic limits” in incentive plans and overturned Chancery Court precedent. In *In re Investors Bancorp*, the plaintiff stockholders claimed that the directors breached their fiduciary duties by granting themselves unfair and excessive compensation. The company raised the stockholder ratification defense, claiming that the stockholder-approved equity incentive plan imposed meaningful, director-specific limits on discretionary awards and therefore should be subject to business judgment review. The Delaware court held that stockholder-approved equity incentive plans are entitled to the stockholder ratification defense and would be reviewed under the business judgment rule only when the stockholders had approved specific awards or a self-executing plan under which the directors have no discretion when making awards. In rejecting the stockholder ratification defense in an incentive plan under which directors have discretion in making the awards, regardless of meaningful limits on awards, the court reasoned that when stockholders grant directors broad legal authority, the stockholders do so knowing that the directors are subject to fiduciary standards in exercising that authority. For more information, see <https://courts.delaware.gov/Opinions/Download.aspx?id=266580>.

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