

Fixing MFW: Fairness and Vision in Controller Self-dealing

Zohar Goshen
Columbia Law
School

Assaf Hamdani
Tel Aviv
University

Dorothy Lund
Columbia Law
School

**2025 ECGI Global Corporate
Governance Colloquium**

Fixing MFW: Fairness and Vision in Controller Self-dealing

Gameplan

1. Baseline controller self-dealing regulatory framework
2. Why idiosyncratic vision challenges the framework
3. *MFW* cleansing and its flaws
4. Our proposals to improve the regulatory framework (with bonus commentary on SB21)

Fixing MFW: Fairness and Vision in Controller Self-dealing

Baseline: No cleansing or cleansing failing:

Judicial Valuation (price and process):

- * Expensive and complex
- * Idiosyncratic vision: **impossible to value**

Fixing MFW: Fairness and Vision in Controller Self-dealing

MFW Requirements:

Do both:

1. A special committee approval, and
2. Majority of minority approval

Get: Business judgment rule protection

Do just one:

Get: A shift of the burden of proof

Fixing MFW: Fairness and Vision in Controller Self-dealing

MFW Requirements:

1. Special Committee Approval
2. Majority of Minority Approval
 - * Informed
 - * Uncoerced



Fixing MFW: Fairness and Vision in Controller Self-dealing

Fixing MFW:

1. Special Committee Approval
2. Majority of Minority Approval
 - * Informed: **Only Financial/Economic Terms**
 - * Uncoerced

Fixing MFW: Fairness and Vision in Controller Self-dealing

Fixing MFW:

1. Special Committee Approval
 - * Corwin-style Cleansing
2. Majority of Minority Approval
 - * Informed: **Only Financial/Economic Terms**
 - * Uncoerced

Fixing MFW: Fairness and Vision in Controller Self-dealing

MFW Requirements:

1. Special Committee Approval
2. Majority of Minority Approval

The cleansing mechanisms are treated equally

Fixing MFW: Fairness and Vision in Controller Self-dealing

Fixing MFW: The cleansing mechanisms are not equal

1. Special Committee Approval
 - * Limited Cleansing Power
2. Majority of Minority Approval
 - * High Cleansing Power

Fixing MFW: Fairness and Vision in Controller Self-dealing

Fixing entire fairness review:

If only one is used:

1. Special Committee Approval
 - * Reject claims about idiosyncratic vision
2. Majority of Minority Approval
 - * Strong presumption of fair price,
give little weight to comparables

Fixing MFW: Fairness and Vision in Controller Self-dealing

Fixing amended Section 144:

Non-freezeouts:

1. Special Committee Approval Only
 - * Significant Transactions
 - or those with Idiosyncratic Vision No BJR
2. Majority of Minority Approval Only
 - * BJR

Thank you