Must an AI Public Benefit Corporation Take the Highest Bid?

Delaware's first written decision on PBC fiduciary duties in a change-of-control transaction says price is not the board's only legal objective. It also shows why "purpose" without supporting governance may be an incomplete safeguard.

Mark C. Franco, Zhun Lu, Ph.D., and Mikhail Usubyan | Partners, Rimon P.C.

Imagine two bidders for an artificial-intelligence company. One offers more money. The other offers somewhat less, but makes stronger commitments concerning model safety, research continuity, employees, data use or the company's broader mission. Must the board accept the richer offer?

For a conventional Delaware corporation in "Revlon mode," the board must seek the best value reasonably available to stockholders. That does not mechanically mean the highest headline price: closing certainty, regulatory risk and the form of consideration may matter. But they matter because they affect stockholder value.

A Delaware public benefit corporation, or PBC, is different. It remains a for-profit corporation, but its board must balance three legally recognized interests: stockholders' pecuniary interests, the best interests of those materially affected by the corporation's conduct, and the specific public benefit identified in its charter. Delaware's PBC statute therefore does more than authorize mission-oriented branding; it changes the board's statutory mandate.

The first test came through a rescue financing – not a sale

In Drakes Landing Associates, L.P. v. Tilden Park Capital Management, L.P., C.A. No. 2025-0898-NAC (Del. Ch. July 29, 2026), the Delaware Court of Chancery addressed for the first time how *Revlon* applies to a PBC in a change-of-control transaction.

MPower Financing, PBC, a lender serving international students, needed urgent liquidity. Two existing lenders proposed financing coupled with the right to convert approximately $109 million of debt into equity. Full conversion would increase their combined ownership from roughly 25.5% to nearly 85% and substantially dilute the other stockholders. An independent special committee, assisted by separate legal and financial advisers, tested the market and approved the transaction.

The setting matters. A debt conversion, recapitalization or distressed financing can transfer control just as effectively as a merger – often when time is short and the interests of stockholders, employees, customers and corporate mission may diverge.

What the court held – and left open

Vice Chancellor Nathan Cook separated the standard of conduct (what directors are supposed to pursue) from the standard of review (how a court evaluates their decision).

As a standard of conduct, traditional *Revlon* value maximization does not govern a PBC board. Making the best price for stockholders the board's exclusive objective would conflict with the three-part balancing mandate under Section 365(a) of the Delaware General Corporation Law (the "**DGCL**") (8 Del. C. § 365(a)).

As a standard of review, however, enhanced scrutiny may survive in modified form. Vice Chancellor Cook called this possible standard "PBC enhanced scrutiny," under which a court might examine whether the directors' actions in balancing the three statutory interests fell outside the range of reasonableness. The court expressly left open whether that standard actually applies.

Instead, the claims were dismissed with prejudice at the pleading stage under the statutory safe harbor in Section 365(b) of the DGCL (8 Del. C. § 365(b)). A PBC director is deemed to satisfy fiduciary duties concerning a balancing decision when the decision is informed and disinterested and is not so irrational that no

person of ordinary, sound judgment would approve it. The court also left open whether enhanced scrutiny governs the safe harbor's "informed" requirement.

The plaintiffs conceded the committee's independence and disinterest; their pleading focused principally on whether the committee had conducted a sufficiently thorough market process – an allegation directed to stockholders' pecuniary interests. The court emphasized that this was only one of the three interests the PBC board was required to consider. The complaint did not adequately allege that the committee had failed to inform itself regarding the corporation's public benefit or the interests of those materially affected by its conduct. Nor did they plead waste. This was a pleading-stage dismissal, not a trial finding that the committee properly balanced all three interests.

The court also suggested, without deciding, that Section 144(a)(1) of the DGCL (8 Del. C. § 144(a)(1)) and the charter's exculpation provision would independently support dismissal of the claims against the committee members.

Drakes Landing is therefore an important first word, not a complete doctrinal map. It does not hold that "mission" automatically defeats price or permit a board to invoke purpose as a blank check. It establishes the narrower – but consequential – point that stockholder value is not the PBC board's only legally permissible end.

PBC directors still owe the fundamental fiduciary duties of care and loyalty, subject to the PBC statute's specific protections. They must inform themselves, act in good faith, address conflicts and exercise good-faith oversight of legal compliance. PBC status also does not free directors from the obligation to comply with applicable law or with the corporation's certificate of incorporation and valid bylaws. In the PBC context, those constraints include the statutory obligation to balance the interests identified in Section 365(a), including the specific public benefit or public benefits stated in the charter.

Purpose becomes legally relevant – but remains imperfectly enforced

In a sale process, a PBC board may evaluate whether a buyer will preserve the chartered benefit, protect constituencies materially affected by the company, or avoid externalities inconsistent with its purpose – even when those considerations do not produce the highest bid.

For an AI company, commitments concerning model deployment, safety controls, customer data, research access or post-closing governance could therefore become part of the fiduciary calculus. That is an implication of the statute and the decision, not a holding concerning any particular transaction term.

Broader discretion also creates an agency problem. Purpose may justify rejecting a richer proposal; it may also become a vocabulary for entrenchment or favoritism. But the PBC statute itself does not make beneficiaries of the public benefit (or other affected stakeholders) the board's fiduciary beneficiaries. Section 365(b) expressly provides that directors do not owe them duties merely because of those interests. And an action to enforce the statutory balancing requirement may be brought only by qualifying stockholders, subject to ownership thresholds under Section 367 of the DGCL (8 Del. C. § 367).

That distinction between legal latitude and institutional accountability is not merely theoretical. Anthropic itself has explained that PBC status gives its directors legal latitude to balance public interests with stockholder value, but does not by itself make directors directly accountable to other stakeholders. Anthropic therefore supplemented its PBC status with a Long-Term Benefit Trust holding special board-election rights; in April 2026, Anthropic announced that Trust-appointed directors had become a majority of its board. OpenAI has adopted a different mission-protection mechanism: the OpenAI Foundation controls OpenAI Group PBC, appoints all of its directors and can replace them.

These structures make an important point for founders and investors: PBC status changes the board's legal mandate, but the durability of the mission may depend just as much on who controls the board and how that control is protected.

Drakes Landing does not tell us whether OpenAI or Anthropic would – or could – accept a particular acquisition proposal. PBC duties would be only part of the analysis. Charter provisions, special voting rights, investor protections, contractual arrangements, regulatory constraints and the powers of the Foundation or Trust could be equally important. But Delaware law would not necessarily reduce the relevant board's analysis to a comparison of financial bids.

Practical consequences

For founders, the public-benefit provision is not decorative boilerplate. It identifies one leg of the board's fiduciary mandate and should be drafted with future financings, control shifts and exits in mind.

For investors, PBC status may support mission continuity but introduce exit uncertainty. Voting arrangements, protective provisions and liquidity expectations should reflect that tradeoff before a distressed transaction tests it.

For boards and advisers, a conventional financial analysis may be necessary but not sufficient. Directors should inform themselves about all three statutory interests and create a contemporaneous record demonstrating that the relevant interests were actually considered and balanced. *Drakes Landing* does not prescribe particular language for minutes or resolutions, but its discussion of Section 220 of the DGCL (8 Del. C. § 220) makes the quality of that record especially important.

For buyers, the highest price may not be enough. Credible commitments regarding governance, mission, employees, customers, data use, safety or post-closing operations may affect not only deal optics, but the target board's legal analysis.

A Delaware PBC is not a conventional corporation with a mission statement attached. In a control transaction, its public-benefit purpose forms part of the board's legally mandated balancing of interests. Yet PBC status alone does not guarantee that purpose will prevail; mission durability may depend just as much on governance architecture and process.

Drakes Landing is unlikely to be Delaware's last word, but it makes one point clear: in a PBC control transaction, stockholder value remains a mandatory part of the board's analysis without being its exclusive legal objective.

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