

5 Lessons For VC Investors From Del. IPO Ruling

By **Ben Dubin** (August 21, 2026)

Most venture investors expect an initial public offering to close a company's private market chapter. At Aurion Biotech Inc., a proposed IPO opened a new one.

Aurion initially sought to proceed with an IPO over the objection of Alcon Research LLC, a substantial preferred stockholder that had also expressed interest in acquiring the company and that ultimately became Aurion's controlling stockholder.



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On June 26, Chancellor Kathaleen St. J. McCormick of the Delaware Court of Chancery dismissed the latest derivative action arising from that fight.[1]

Rostov v. Alcon Research LLC offers an important lesson: Governance disputes are not resolved by deciding which investor's strategy looks better in hindsight. They turn on the documents' language, the sequence of corporate actions and whether a plaintiff can connect challenged conduct to an identifiable injury.

Aurion also illustrates a broader point: Board designation rights, protective provisions, voting limitations, transfer restrictions and conversion rights may be negotiated as separate economic terms, but when investors' interests diverge, they function as an integrated governance system.

From Series C Financing to a Fight for Control

Aurion is a biotechnology company developing a cell therapy for corneal endothelial disease. In 2022, it raised a Series C financing in which funds affiliated with Deerfield Management purchased 50% of the Series C preferred stock and Alcon bought 36%.

Investors holding more than one-third of the Series C shares received consent rights over specified corporate actions. Alcon, Deerfield and Series B investor Petrichor received board designation rights. A voting agreement required Alcon's shares above a 19% threshold to be voted by proxy in proportion to other investors' Series C votes.

Aurion's board formed a special committee to evaluate an Alcon transaction, an IPO and other alternatives. In June 2024, the board authorized the committee to pursue an IPO, with Alcon's designee casting the only opposing vote.

Alcon then sued, contending that Aurion could not complete the proposed IPO or effect the reverse stock split needed to create sufficient authorized-share capacity without the consent of holders of 66.7% of the Series C preferred stock, and that it could revoke its voting proxy.

In January 2025, the Court of Chancery issued a split decision.[2] Aurion could complete the IPO and the reverse stock split without Alcon's consent, but Alcon could revoke the proxy and vote its full stake. The parties appealed.

On Feb. 6, 2025, Aurion's special committee unanimously postponed the IPO. Eight days

later, Alcon purchased Petrichor's Series B preferred shares and became Aurion's controlling stockholder with 54% as converted.

After the board chair resigned, Alcon and Petrichor replaced Petrichor's board designee with an Alcon designee, dissolved the special committee and amended the bylaws to require a nondelegable majority board vote for any financing. Deerfield then filed two suits, one asserting fiduciary claims and one challenging the board's composition.

Both were resolved in March 2025. The fiduciary action settled when Alcon purchased Deerfield's preferred stock and the challenged convertible notes, making Alcon a 99% stockholder as converted. Deerfield voluntarily dismissed the other with prejudice. The pending appeal was later dismissed.

David Rostov, former Aurion chief financial officer and co-founder, then brought *Rostov v. Alcon*, a derivative action alleging that Alcon and Petrichor operated as a control group to thwart the IPO, investor-appointed directors breached fiduciary duties, Deerfield improperly settled its litigation in exchange for Alcon's buyout, and the transfers violated Aurion's contractual right of first refusal.

On June 26, the court dismissed every count under Court of Chancery Rule 12(b)(6). Because the ruling came at the pleading stage, it should not be read as a factual finding that every challenged action was proper. The court held only that the complaint did not plead a reasonably conceivable basis for relief.

Five lessons deserve particular attention.

1. In a control case, the timeline may matter more than the optics.

The sequence looks striking in hindsight. But fiduciary duty liability requires more than a troubling sequence. It requires a legally sufficient connection between the defendant's conduct and the alleged injury.

That connection was missing in the *Rostov* case.[3] The special committee postponed the IPO on Feb. 6, 2025, before Alcon became a controller on Feb. 14 and before the board and bylaw changes the complaint challenged.

The complaint did not question the committee's independence or process. Nor did it plead that Alcon, once a controller, prevented a specific later IPO.

The plaintiff, the court observed, effectively sought controller liability for the company's subsequent inaction. Even assuming that theory could be viable, the complaint pled no facts connecting the controller to it. Because the claim failed on causation, the court did not need to decide whether Alcon and Petrichor actually constituted a control group.

For venture litigants, the lesson is simple but consequential: Chronology is not merely background. It may determine whether causation can be pled at all.

A plaintiff challenging conduct by a newly controlling investor must identify the corporate decision or injury allegedly caused by that control. A defendant, conversely, should reconstruct the decision timeline before debating the commercial wisdom of the underlying transaction.

2. Investor-appointed directors must be evaluated individually.

The complaint alleged that Alcon's board designees were placed on the board to manufacture deadlock and prevent an IPO.

Where directors are protected by an exculpatory charter provision, Delaware requires a plaintiff to plead a nonexculpated claim against each director individually. Group allegations that investor-appointed directors acted collectively at their sponsor's direction will not suffice. Rostov therefore needed to plead bad faith as to each director, and the court held the complaint did not.[4]

The complaint relied on an Alcon designee's statement at a 2024 board meeting that "we" opposed the IPO. Chancellor McCormick held that a single plural pronoun, without additional supporting facts, was insufficient to overcome the presumption of good faith.

The court also noted that the complaint identified no board decision on which the directors deadlocked. A generalized allegation of "conscious inaction" could not substitute for director-specific facts.

An investor's contractual power to designate a director does not eliminate the director's fiduciary obligations. But designation alone does not establish that the director acted at the appointing investor's direction. Boards should document the company-specific reasons supporting each director's decision, especially where the appointing investor has a separate commercial interest.

The court separately dismissed the claim against board chair Thomas Frinzi, who resigned minutes before the written consents reconstituting the board. Directors are generally free to resign, the court explained, and resignation alone ordinarily is not a breach of loyalty.

The court distinguished the extreme circumstances of *In re: Puda Coal*, decided by the Court of Chancery in 2013, where the directors allegedly abandoned a company to the principal suspected wrongdoer after confirming asset theft.[5]

The practical lesson is not that resignation timing is irrelevant, but that timing and the creation of an even-numbered board, without more, do not establish a loyalty breach.

3. Delaware will not presume that an IPO was the only correct strategy.

Much of the complaint rested on the proposition that Aurion should have pursued the IPO, and that those who opposed or failed to revive it acted against the company's interests.

The court rejected that premise. Delaware law does not permit a court to substitute a stockholder's business judgment for the board's. Directors are presumed to act in good faith, and disagreement over whether to pursue an IPO, a sale, private financing or continued independent operation does not by itself establish a fiduciary breach.[6]

Different constituencies may rationally prefer different paths based on their liquidation rights, time horizons, liquidity needs, strategic interests and tolerance for execution risk. Those divergent preferences may create genuine conflicts requiring careful governance procedures, but disagreement over strategy does not itself establish wrongdoing.

The practical lesson is not that boards can abandon an IPO without scrutiny, but that the record should explain the decision. A contemporaneous process grounded in financing

needs, market conditions, milestones and available alternatives will be far more defensible than a reconstruction assembled after litigation begins.

4. Settlement and financing claims need a coherent theory of corporate harm.

The court applied the same discipline to the settlement and convertible note claims.[7]

Rostov alleged that Deerfield, by becoming a derivative plaintiff in the earlier litigation, assumed fiduciary duties to other stockholders and breached them by settling in exchange for Alcon's buyout and a release of counterclaims. The court did not decide whether Deerfield owed the asserted duty. It held that, because the derivative claims were dismissed without prejudice, leaving other stockholders free to pursue them, any personal benefit Deerfield received could not plausibly be attributed to a permanent surrender of Aurion's claims.

The complaint also alleged that Deerfield received a control premium when it sold to Alcon, while separately alleging that Alcon had already become Aurion's controller through the earlier Petrichor purchase. The court held the allegations internally inconsistent, rendering the claim unviable.

The convertible note theory fared no better. The settlement had amended the notes to remove their more onerous provisions, and the complaint never explained why the notes remained unfair as amended.

The Rostov case underscores the broader pleading point: "Better financing was available" is not a theory. It is a conclusion that must be supported with facts about available cash, alternatives, timing, terms and the board's process.

5. Standard venture documents are only as good as their definitions and schedules.

The most immediately practical portion of the decision concerns Aurion's right-of-first-refusal agreement.[8]

Rostov argued that the preferred stock sales to Alcon were void because Aurion was never offered its right to purchase the shares first.

The agreement granted Aurion a right of first refusal over "Transfer Stock" sold by "Key Holders." But Schedule B, the schedule identifying the key holders, was blank.

Rostov argued that the omission was a drafting error. The court declined to draw that inference: Petrichor and Deerfield appeared on Schedule A as "Investors," a category not subject to the provision, and Aurion's confidential Form S-1 described the agreement without specifying which stockholders it covered.

More decisively, even assuming the parties intended Petrichor and Deerfield to be key holders, the definition of "Transfer Stock" expressly excluded preferred stock and common stock issued or issuable upon conversion of preferred stock. Because the challenged transactions involved preferred shares, the transfers fell outside the agreement.

The venture industry often builds financings from interconnected documents: a charter, stock purchase agreement, investors' rights agreement, voting agreement, and right-of-first-refusal and co-sale agreement. The National Venture Capital Association describes its

forms as industry-embraced starting points to be tailored to each user's specific requirements.[9] Aurion's own charter, the January 2025 opinion noted, was drafted from the then-current NVCA form.

When a financing involves multiple preferred series, strategic investors, secondaries or ownership caps, counsel should test the documents against realistic scenarios:

- Does the right of first refusal apply to founders only, or also to institutional investors?
- Does it cover preferred stock, common stock issued or issuable upon conversion, or both?
- Are all schedules complete and consistent with the defined terms?
- If a voting limitation depends on a proxy, does the agreement expressly make the proxy irrevocable?
- What happens if an investor obtains control through purchases from other preferred holders?

A missing name or an excluded class of stock can determine whether a control-shifting transfer is contractually restricted years later.

What is the larger venture capital lesson?

Rostov is easy to view as an idiosyncratic dispute among sophisticated investors. It should instead be understood as a warning about the latent architecture of venture financings: the governance system embedded in documents negotiated term by term.

The decision also shows the limits of narrative force. A proposed IPO vanished, a minority investor became a 99% owner and the board changed. Those facts produced a compelling story. They did not, without more, produce a viable complaint.

For investors and directors, protection lies in precise documents, independent process and a contemporaneous record tying decisions to the company's interests. For plaintiffs, the challenge is to move beyond suspicious chronology and plead the precise act, duty, causation and injury behind each claim.

In venture litigation, as in venture financing, the details do not merely support the deal. They are the deal.

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[1] Rostov v. Alcon Research, LLC, C.A. No. 2025-0648-KSJM (Del. Ch. June 26, 2026) (the

"Order"), available at <https://courts.delaware.gov/opinions/download.aspx?id=397390>.

[2] Alcon Research, LLC v. Aurion Biotech, Inc., 2025 WL 312371 (Del. Ch. Jan. 27, 2025), available at <https://courts.delaware.gov/Opinions/Download.aspx?id=374670>.

[3] Order ¶¶ 22–24 & n.54.

[4] Order ¶¶ 25–27.

[5] Order ¶¶ 28–30 (citing *In re Puda Coal, Inc. S'holders Litig.*, C.A. No. 6476-CS (Del. Ch. Feb. 6, 2013) (TRANSCRIPT)).

[6] Order ¶¶ 24, 27.

[7] Order ¶¶ 31–35.

[8] Order ¶¶ 36–41.

[9] See National Venture Capital Association, Model Legal Documents, <https://nvca.org/model-legal-documents/> (describing the documents as industry-embraced forms that reduce transaction costs and establish norms, while noting that each is intended as a starting point and should be tailored to the user's specific requirements).