

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RYAN LANE, JOHN KIM,	§
JONATHAN P. FOSTER, ADRIAN	§
SOLGAARD, ÖRN ÓLASON,	§ No. 417, 2026
ROHAN CHAUHAN, MATTHEW	§
HOMER, and IAN READ,	§ Court Below—Court of Chancery
	§ of the State of Delaware
Defendants Below,	§
Appellants,	§ C.A. No. 2026-0447
	§
v.	§
	§
ATG CAPITAL OPPORTUNITIES	§
FUND LP,	§
	§
Plaintiff Below,	§
Appellee,	§
	§
and	§
	§
EMPERY DIGITAL, INC.,	§
	§
Nominal Defendant.	§

Submitted: October 7, 2026

Decided: October 8, 2026

Before **SEITZ**, Chief Justice; **LEGROW**, **GRIFFITHS**, and **ZURN**, Justices; and **WINSTON**, Judge¹, constituting the Court *en Banc*.

¹ Sitting by designation under DEL. CONST. art. IV, § 12 and Supreme Court Rules 2(a) and 4(a) to complete the quorum.

ORDER

This 8th day of October, 2026, after careful consideration of the parties' briefs, the arguments of counsel, and the record below, we affirm the Court of Chancery's interpretation of the meaning of "participant" under Instruction 3(a)(v) to Item 4 of Schedule 14A, as incorporated into Empery Digital, Inc.'s bylaws. We further hold that, on the record presented, the Court of Chancery did not abuse its discretion in concluding that Appellants waived legal theories not advanced until late in the expedited proceedings—specifically, that ATG was required to disclose an "agreement, arrangement or understanding" with Brown irrespective of Brown's status as a "participant," and that Rule 14a-9 required disclosure of ATG's Bitcoin hedge.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Abigail M. LeGrow
Justice