IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE R1 RCM INC. MERGER LITIGATION	CONSOLIDATED C.A. No. 2025-1067-JTL

OPINION ADDRESSING MOTION TO DISMISS COUNT I

Date Submitted: July 7, 2026
Date Decided: October 28, 2026

Gregory V. Varallo, Thomas C. Mandracchia, Alexander J. Rigby, BERNSTEIN LITOWITZ BERGER & GROSSMANN LLP, Wilmington, Delaware; Mark Lebovitch, BERSTEIN LITOWITZ BERGER & GROSSMANN LLP, New York, New York; Christopher H. Lyons, Jason M. Avellino, ROBBINS GELLER RUDMAN & DOWD LLP, Wilmington, Delaware; Randall J. Baron, David A. Knotts, ROBBINS GELLER RUDMAN & DOWD LLP, San Diego, California; Benjamin M. Potts, Margaret Rockey, JOHNSON VAN KWAWEGEN LLP, Wilmington, Delaware; Jeroen van Kwawegen, Christopher J. Orrico, Thomas G. James, JOHNSON VAN KWAWEGEN LLP, New York, New York; Lauren M. Cruz, JOHNSON VAN KWAWEGEN LLP, Los Angeles, California; *Attorneys for Co-Lead Plaintiffs*.

Kevin R. Shannon, Berton W. Ashman, Jr., Ryan M. Crowley, POTTER ANDERSON & CORROON LLP, Wilmington, Delaware; Anitha Reddy, Adam M. Gogolak, Alyssa M. Hunt, WACHTELL, LIPTON, ROSEN & KATZ, New York, New York; *Attorneys for Defendants TCP-ASC ACHI Series LLLP, Ascension Health Alliance, TowerBrook Capital Partners L.P., Neal Moszkowski, Ian Sacks, Anthony J. Speranzo, and Anthony R. Tersigni*.

Kevin M. Coen, Jacob M. Perrone, MORRIS, NICHOLS, ARSHT & TUNNELL LLP, Wilmington, Delaware; James P. Smith III, Matthew DiRisio, Michelle D. Tuma, Sophia Borne, WINSTON TAYLOR LLP, New York, New York; *Attorneys for Defendants Joseph Flanagan and John B. Henneman III*.

Joseph O. Larkin, Arthur R. Bookout, Jessica R. Kunz, Nicole A. DiSalvo, Sukhandeep Kaur, SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP, Wilmington, Delaware; *Attorneys for Defendants Jill Smith and Agnes Bundy Scanlan.*

LASTER, V.C.

A private equity firm and a nonprofit health system formed a limited liability limited partnership with the catchy name of TCP-ASC ACHI Series LLLP ("TA"). Through TA, they held a significant equity stake in a public company. TA also possessed the contractual right to nominate a majority of the company's board of directors (respectively, the "Majority-Nomination Right" and the "Board"), and the company committed to use its best efforts to seat TA's nominees (the "Efforts Obligation").

After TA took the company private, former stockholders filed suit. They allege that TA, the private equity firm, and the nonprofit health system (together, the "TA Defendants") controlled the company, stood on both sides of the transaction, and breached their fiduciary duty of loyalty by extracting an unfair deal.

The TA Defendants moved to dismiss the claim against them. As the sole basis for their motion, they argue that TA could not conceivably be a controlling stockholder. If true, then TA did not owe fiduciary duties, and the TA Defendants could not be sued for breaching duties they did not owe.

Section 144 of the Delaware General Corporation Law[1] (respectively, the "Safe Harbor Statute" and the "DGCL") "provides powerful protection for conflicted transactions."[2] The Safe Harbor Statute replaces certain common law standards with clear and stable brightline rules. The Safe Harbor Statute also replaces the common

---

[1] 8 *Del. C.* § 144.

[2] *Dodiya v. Franklin*, — A.3d —, —, 2026 WL 2517931, at *1 (Del. Ch. Aug. 26, 2026).

law's factually intensive, case-specific inquiry into the existence of control with a clear and stable definition of "controlling stockholder" (the "Controller Definition").

The Controller Definition contains three triggers. One turns on ownership or control of a majority of the stockholder voting power (the "Stock-Majority Trigger"). Another turns on the ability to cause the election of directors who can exercise a majority of the director voting power (the "Board-Majority Trigger"). A third has three requirements (the "Non-Majority Trigger"): (1) ownership or control of at least one-third of the stockholder voting power (the "One-Third Floor"), (2) power functionally equivalent to a majority stockholder, and (3) the ability to exercise managerial authority over the business and affairs of the corporation.

The plaintiffs assert that TA qualified as a controlling stockholder under the Non-Majority Trigger. That attempt fails because it is not reasonably conceivable that TA cleared the One-Third Floor. The plaintiffs argue otherwise by including TA's warrants in the calculation, but the One-Third Floor does not contemplate using fully diluted ownership. The plaintiffs also argue that just before the transaction closed, TA exercised its warrants and cleared the One-Third Floor. That event happened, however, after the alleged breaches of fiduciary duty. When TA took the actions that allegedly support the plaintiffs' claim, TA remained below the One-Third Floor.

The plaintiffs succeed, however, under the Board-Majority Trigger. Although the statutory trigger is ambiguous, the Safe Harbor Statute's legislative history indicates that the combination of the Majority-Nomination Right and the Efforts Obligation gives TA the necessary power to cause the election of a majority of the

Board. The TA Defendants cite two limitations on TA's contractual right, but the Safe Harbor Statute's legislative history indicates that they are not enough to defeat the Board-Majority Trigger.

The TA Defendants also argue that the plaintiffs failed to plead that TA qualifies as a common-law controller. As they see it, the Board-Majority Trigger is not a toggle switch that flips controlling stockholder status on or off. Instead, they think it operates like a dimmer switch: satisfying the Board-Majority Trigger turns on the power, but a plaintiff must turn up the dial by pleading common-law-controller status before the light of fiduciary duties turns on.

That argument is misguided. Under the plain language of the Controller Definition, all three triggers operate as toggle switches. The Stock-Majority Trigger turns on a brightline threshold; controlling stockholder status flips on when that threshold is met. The Non-Majority Trigger incorporates a brightline threshold (the One-Third Floor) and two explicitly qualitative elements; controlling stockholder status flips on when all three requirements are met. The Board-Majority Trigger operates in parallel fashion; when its requirements are met, controlling stockholder status flips on. Assuming for the sake of argument that the Controller Definition was ambiguous as to this point, evidence of legislative intent supports the toggle-switch interpretation.

The TA Defendants have not advanced any other basis for pleading-stage dismissal. The claim against them for breach of fiduciary duty can therefore move past the pleading stage.[3]

I. FACTUAL BACKGROUND

The facts are drawn from the operative complaint, documents integral to the complaint or that the complaint incorporates by reference, and documents subject to judicial notice.[4] At this procedural stage, the court must credit the Complaint's well-pled allegations and draw all reasonable inferences in the plaintiffs' favor.

A. The Company

R1 RCM Inc. (the "Company") is a Delaware corporation that provides technology-enabled revenue cycle management services to hospitals and health systems across the United States. The Company traces its current incarnation to a merger in 2022 between the Company's predecessor and a portfolio company of New Mountain Capital, L.L.C., a private equity firm (the "2022 Merger").

---

[3] The plaintiffs asserted claims for breach of fiduciary duty against other defendants who served as company directors. Those claims advance multiple theories, and the directors have raised diverse bases for dismissal. Those claims are also more fact intensive and require a deeper dive into the complaint's allegations. The court will issue a separate decision addressing those claims.

[4] The operative complaint is the Verified Amended Class Action Complaint (the "Complaint"). Dkt. 56. Citations in the form "AB" refer to the plaintiffs' omnibus answering brief. Dkt. 85. Citations in the form "Ex." refer to the exhibits submitted in support of the defendants' motions to dismiss. Dkts. 44–46, 48–50, 63, 90. Page references cite internal pagination whenever possible.

Before the 2022 Merger, TA owned a majority of the Company's equity. TA is a joint venture between TowerBrook Capital Partners L.P., a private equity firm, and Ascension Health Alliance, a Missouri nonprofit corporation and health system.

After the 2022 Merger, TA owned 124,289,200 shares of common stock, reflecting 29.4% of the outstanding shares. TA also owned warrants to purchase 40,464,855 common shares. On a fully diluted basis, TA owned approximately 35.7% of the Company's equity.

B. The TA Agreement

In connection with the 2022 Merger, TA and the Company entered into an amended and restated investor rights agreement (the "TA Agreement").[5] The TA Agreement granted TA governance rights that it could exercise as long as TA met specified ownership thresholds. When measuring TA's ownership, the TA Agreement used the defined term "Ownership Percentage" that incorporated warrants on an as-exercised basis.[6]

1. The Majority-Nomination Right

The TA Agreement contained the Majority-Nomination Right. It provided that as long as TA's Ownership Percentage exceeded 33%, TA was "entitled to nominate

---

[5] Ex. 6 (cited as "TA Agr.").

[6] *See id.* § 1 (defining "Ownership Percentage").

such number of individuals to the Board constituting a majority of directors" (the "TA Designees").[7]

The TA Agreement placed two limitations on the Majority-Nomination Right. First, the TA Agreement included provisions designed to ensure that if applicable listing standards required an independent Board majority, then the Board would satisfy that requirement (the "Independent-Majority Procedures"). The Company was listed on the Nasdaq Global Select Market, and Nasdaq requires that listed companies have a majority of independent directors, unless an exception applies.[8] The Company did not qualify for an exception.

Under the Independent-Majority Procedures, the Company committed that unless "otherwise directed or agreed by [TA]," all nominees to the Board who were not TA Designees would qualify as independent directors under Nasdaq listing standards and "applicable law."[9] The TA Agreement carved out an exception to that

---

[7] *Id.* § 2.1(a)(i). At lower levels of ownership, TA had the right to nominate fewer members of the Board. As long as TA's Ownership Percentage was more than 10% but less than 33%, TA could nominate a proportionate number of directors, rounded down, but never less than two. *Id.* § 2.1(a)(ii). As long as TA's Ownership Percentage was more than 5% but less than 10%, TA could nominate a proportionate number of directors, rounded down, but never less than one. *Id.* § 2.1(a)(iii).

[8] Nasdaq R. 5605(b)(1) ("A majority of the board of directors must be comprised of Independent Directors as defined in Rule 5605(a)(2).").

[9] TA Agr. § 2.1(a) ("For so long as the Ownership Threshold is met, . . . except (i) with respect to one (1) designee to the Board designated by [New Mountain] and (ii) as otherwise directed or agreed by [TA] and to the extent required by applicable listing standards (including any requirements for initial listing), the Company agrees to cause all members of the Board that are not [TA] Designees (other than the chief executive officer of the Company) to be 'independent' as defined in the listing

requirement for the Company's CEO and one New Mountain designee. The Company therefore had to ensure that all but two of the nominees who were not TA Designees qualified as independent directors under Nasdaq listing standards and applicable law. For its part, TA committed to nominate a mix of directors so that, when its nominees were combined with all other nominees, the Board would have a majority of directors that qualified as independent directors under Nasdaq listing standards and applicable law (the "Conditional Floor").[10]

Second, the TA Designees had to be "reasonably acceptable to the Board's Nominating and Corporate Governance Committee" (the "Acceptability Condition").[11] The TA Agreement did not specify who served on the Nominating and Corporate Governance Committee (the "Nominating Committee"), but it provided generally that "subject to applicable law and . . . listing standards[,] . . . the Company will offer the [TA] Designees (to be selected by [TA]) an opportunity to, at [TA's] option, either sit on each regular committee of the Board in relative proportion to the number of [TA]

---

standards of the Nasdaq Global Select Market (or other United States national securities exchange that the Common Stock is listed upon, if any) and applicable law (and all non-[TA] Designees other than the chief executive officer of the Company and any designees described in clause (i) of this clause (B) have agreed to resign if necessary to effectuate the foregoing).").

[10] *Id.* ("To the extent required by applicable listing standards (including any requirements for initial listing), [the TA] Designees shall include a number of persons that qualify as 'independent' directors as defined in [listing standards] and applicable law such that, together with any other 'independent' directors serving on the Board that are not [TA] Designees, the Board is comprised of at least a majority of 'independent' directors.").

[11] *Id.* § 2.1(b).

Designees on the Board or attend (but not vote) at the meetings of such committee as an observer" (the "Committee Composition Provision").[12]

The Committee Composition Provision made it likely that TA Designees would comprise a majority of the Nominating Committee. In fact, the Company's 2023 proxy statement disclosed that three of the four members of the Nominating Committee (including the Chair) were TA Designees.[13] Towerbrook's co-CEO and its Managing Partner were two of those designees.[14]

Under the Efforts Obligation, the Company committed to "nominate the [TA] Designees for election to the Board and use all commercially reasonable efforts to cause the [TA] Designees to be elected as directors of the Board."[15] The Company also committed that if any TA Designee died, became disabled, resigned, or was removed, then the Board would promptly elect a replacement TA Designee.[16]

---

[12] *Id.* § 2.2. The same provision states that "[i]f [a TA] Designee fails to satisfy the applicable qualifications under law or stock exchange listing standard[s] to sit on any committee of the Board, then the Board shall offer such [TA] Designee the opportunity to attend (but not vote) at the meetings of such committee as an observer." *Id.*

[13] *See* Dkt. 114 at 2.

[14] *Id.*

[15] TA Agr. § 2.1(a).

[16] *Id.* § 2.1(c).

2. The Approval Requirements

The TA Agreement separately identified eleven matters that required TA's approval in its capacity as a stockholder (the "Approval Requirements").[17] Those matters included:

- Approving the Company's annual budget;
- Hiring or firing the Company's CEO;
- Appointing or removing the Board Chair;
- Disposing of assets or businesses exceeding $10 million in the aggregate during any fiscal year (with stated exceptions);
- Making capital expenditures exceeding $25 million in the aggregate during any fiscal year;
- Making any loans or investments in other entities exceeding $25 million in the aggregate during any fiscal year;
- Acquiring any assets exceeding $100 million in the aggregate during any fiscal year (with stated exceptions);
- Incurring any debt exceeding $100 million in the aggregate during any fiscal year (with stated exceptions);
- Creating, authorizing, or issuing any securities in a way that would adversely affect the rights of holders of the Company's common stock;
- Amending or modifying the Company's certificate of incorporation or bylaws in a way that would adversely affect the rights of holders of the Company's common stock; and
- Amending Ascension's services agreement.

---

[17] Technically, the Approval Requirements "require[d] the approval of the holders of a majority of the shares of Common Stock that are held by [TA] or any [of its affiliates] to proceed with such a transaction." *Id.* § 2.4(a).

TA could exercise the Approval Requirements as long as its Ownership Percentage exceeded 25%.[18]

The granularity of the Approval Requirements gave TA blocking power beyond what the holder of a majority of the outstanding voting power could exercise. A stockholder with majority voting power can block actions requiring a stockholder vote, but cannot intervene on more targeted issues.[19]

3. Other Provisions

The TA Agreement contained other governance rights, such as the right to designate the chair of the Board[20] and preemptive rights so TA could preserve its ownership position.[21] Reciprocally, the TA Agreement imposed a standstill restriction on TA. A comparable standstill bound New Mountain.

---

[18] *See id.* §§ 1 (defining "Ownership Threshold"), 2.4(a).

[19] *See* J. Travis Laster, *How to Evaluate Non-Majority Control: What History and Statutes Tell Us–Part Two: The Definitional Consensus*, 31 FORDHAM J. CORP. & FIN. L. 395, 400–01 (2026) [hereinafter *Definitional Consensus*] ("A majority holder can elect and remove directors, adopt bylaws, and veto major transactions that the board initiates and that require stockholder approval, but that is it. The majority stockholder principally wields influence indirectly based on the voting power it can potentially exercise.").

[20] TA Agr. § 2.1(a) ("For so long as the Ownership Threshold is met, (A) [TA] shall be entitled to designate the chairperson of the Board.").

[21] *Id.* § 5.1 (granting TA "the right to purchase from the Company an amount of any New Securities that the Company may, from time to time, propose to issue and sell up to [TA's] Ownership Percentage (calculated as of the date of delivery of such Notice of Issuance) to the extent such New Securities are actually issued.").

C. A Potential Transaction

In January 2024, New Mountain asked the Board to waive its standstill and expressed interest in making a proposal to acquire the Company for $13.75 per share. The Board instructed New Mountain to explore a joint transaction with TA. The plaintiffs attack the Board for permitting New Mountain to breach its standstill by conveying a specific price. They also contend that the Board favored TA's interests by telling New Mountain to explore a joint deal with TA rather than seeking to generate competition between them.

After a month of discussions with TA, New Mountain again asked the Board to waive its standstill and reiterated its interest in making a proposal to acquire the Company at $13.75 per share. New Mountain also disclosed its proposal publicly. The Board again declined New Mountain's request.

The Board formed a special committee to evaluate the Company's alternatives, negotiate any proposal, and make a recommendation to the Board (the "Committee"). A months-long process ensued during which TA, the members of the Committee, and Company director Joseph Flanagan made decisions and took actions that the plaintiffs challenge. The plaintiffs single out Flanagan for allegedly bargaining for lucrative post-transaction employment with TA and then supporting TA's acquisition bid against the Company. The plaintiffs claim that one of the Committee's financial advisors had close ties to both Flanagan and TA that aligned the advisor's interests with TA.

D. The Solo Bids

On June 30, 2024, New Mountain told the Company that it wanted to make a solo bid. On July 1, New Mountain proposed to acquire the Company for $13.25 per share, a $.50 decrease from its prior expressions of interest. After the Committee countered at $15.00 per share, New Mountain increased its proposal to $13.80 per share. The Committee then asked for $14.40 per share, and New Mountain increased its proposal to $14.05 per share.

Meanwhile, TA teamed up with another private equity firm to make a competing bid. The Committee gave TA time to develop its bid and told TA and New Mountain to submit their best and final bids by July 31, 2024.

On the bid deadline, New Mountain stood pat at $14.05 per share. TA bid $14.30 per share. The Committee recommended TA's bid to the full Board, and the Board unanimously authorized a transaction with TA. The deal was announced on August 1, 2024.

The Company filed its definitive proxy statement on October 16, 2024. Stockholders holding a majority of the Company's outstanding voting power approved the merger on November 14. The transaction was not conditioned on approval by a majority of the disinterested stockholders. The merger closed on November 19 (the "2024 Merger").

E. This Action

The plaintiffs filed this action on September 22, 2025. Count I asserts a claim for breach of fiduciary duty against the TA Defendants as the Company's controlling stockholders. The plaintiffs asserted other claims against individual Company

directors. All of the defendants moved to dismiss the claims against them. This decision addresses the motion to dismiss Count I.

II. LEGAL ANALYSIS

The TA Defendants have moved to dismiss Count I of the Complaint under Rule 12(b)(6). When considering that type of motion, "a trial court should accept all well-pleaded factual allegations in the Complaint as true, accept even vague allegations in the Complaint as 'well-pleaded' if they provide the defendant notice of the claim, [and] draw all reasonable inferences in favor of the plaintiff."[22] The court should "deny the motion unless the plaintiff could not recover under any reasonably conceivable set of circumstances susceptible of proof."[23] Delaware's "governing 'conceivability' standard is more akin to 'possibility,' while the federal 'plausibility' standard falls somewhere beyond mere 'possibility' but short of 'probability.'"[24]

Count I of the Complaint asserts a claim for breach of fiduciary duty against the TA Defendants in their capacity as the Company's controlling stockholders. In seeking dismissal, the TA Defendants argue that TA was not the Company's controlling stockholder and therefore did not owe fiduciary duties. They do not seek dismissal on other grounds.

---

[22] *Cent. Mortg. Co. v. Morgan Stanley Mortg. Cap. Hldgs. LLC*, 27 A.3d 531, 536 (Del. 2011).

[23] *Id.*

[24] *Id.* at 537 n.13.

Enacted in 2025, the Safe Harbor Statute provides greater certainty, predictability, and protection against litigation than the common law offered. The Safe Harbor Statute achieves that goal by taking common-law doctrines, tweaking them to make the requirements easier to meet, and then providing remedial immunity when those requirements are met.[25] When a safe harbor applies, a transaction "may not be the subject of equitable relief, or give rise to an award of damages."[26]

The Safe Harbor Statute also replaces the common law's factually intensive, case-specific inquiry into control[27] with the clear, stable, and predictable Controller Definition:

> "Controlling stockholder" means any person that, together with such person's affiliates and associates:
>
> a. Owns or controls a majority in voting power of the outstanding stock of the corporation entitled to vote generally in the election of

---

[25] *See* Eric S. Klinger-Wilensky, John P. DiTomo & Kyle A. Pinder, *Thirty Years Later – Why Corporations Continue to Choose Delaware: General Perspectives and Thoughts on 2025 DGCL Amendments*, CORP. GOVERNANCE ADVISOR, July/Aug. 2025, at 1, 13, https://www.morrisnichols.com/media/publication/15513_CorporateGovernanceAdvisor-July-2025-ThirtyYearsLater.pdf [https://perma.cc/93F9-RKDA] (comparing common-law mechanisms with the Safe Harbor Statute and identifying key differences, explaining that the amendments "certainly changed some of the requirements for utilizing a cleansing mechanism and will likely require stronger pleadings to survive a motion to dismiss").

[26] 8 *Del. C.* §§ 144(a), (b), & (c).

[27] *See generally* J. Travis Laster, *How to Evaluate Non-Majority Control: What History and Statutes Tell Us–Part One: The Historical Dominance of Functionalism*, 31 FORDHAM J. CORP. & FIN. L. 1 (2025) [hereinafter *Historical Article*].

> directors or in the election of directors who have a majority in voting power of the votes of all directors on the board of directors;
>
> b. Has the right, by contract or otherwise, to cause the election of nominees who are selected at the discretion of such person and who constitute either a majority of the members of the board of directors or directors entitled to cast a majority in voting power of the votes of all directors on the board of directors; or
>
> c. Has the power functionally equivalent to that of a stockholder that owns or controls a majority in voting power of the outstanding stock of the corporation entitled to vote generally in the election of directors by virtue of ownership or control of at least ⅓ in voting power of the outstanding stock of the corporation entitled to vote generally in the election of directors or in the election of directors who have a majority in voting power of the votes of all directors on the board of directors and power to exercise managerial authority over the business and affairs of the corporation.[28]

The Controller Definition thus contains three separate triggers. The Stock-Majority Tigger turns on ownership or control of a majority of the stockholder voting power.[29] The Board-Majority Trigger turns on the ability to cause the election of a board majority.[30] The Non-Majority Trigger has three requirements: (1) clear the One-Third

---

[28] 8 *Del. C.* § 144(e)(2).

[29] Except where the specific language is pertinent, this decision uses "stockholder voting power" or a similar phrase as shorthand for the references in the Stock-Majority Trigger and the One-Third Floor to "voting power of the outstanding stock of the corporation entitled to vote generally in the election of directors or in the election of directors who have a majority in voting power of the votes of all directors on the board of directors."

[30] Except where the specific language is pertinent, this decision uses "board majority" or a similar phrase as shorthand for the reference in the Board-Majority Trigger to "either a majority of the members of the board of directors or directors entitled to cast a majority in voting power of the votes of all directors on the board of directors."

Floor; (2) wield "power functionally equivalent" to someone who meets the Stock-Majority Trigger "by virtue of ownership or control" of stock, and (3) possess "power to exercise managerial authority over the business and affairs of the corporation."[31]

Both sides accept that the Controller Definition determines whether TA qualifies as a controlling stockholder and therefore owes fiduciary duties. The plaintiffs contend that TA qualifies as a controlling stockholder under the Non-Majority Trigger and the Board-Majority Trigger. The TA Defendants contend that neither trigger applies.

To address these contentions, the court must explore the meaning of the Safe Harbor Statute. That task involves statutory interpretation and construction. Both are purely legal issues suitable for resolution at this stage of the case.[32] The act of construing a statute to determine whether its meaning is plain or ambiguous presents a question of law.[33] So does the act of construing an ambiguous statute.[34]

---

[31] 8 *Del. C.* § 144(e)(2)(c).

[32] *See Richardson v. State*, 673 A.2d 144, 145–46 (Del. 1996) ("Statutory interpretation involves a purely legal determination.").

[33] *See Progressive N. Ins. Co. v. Mohr*, 47 A.3d 492, 496 (Del. 2012) (treating as a question of law whether a statute "is plain on its face and susceptible only to the meaning [one party] ascribes to it" or "whether the statute is also reasonably susceptible to the opposite interpretation advocated by [the other party]"); *see generally Colonial Ins. Co. of Wis. v. Ayers*, 772 A.2d 177, 179 (Del. 2001) ("Judicial construction of a statute is a determination of law.").

[34] *See Progressive*, 47 A.3d at 500 (treating construction of an ambiguous statute as a question of law).

The goal of statutory construction "is to give effect to the policy intended by the General Assembly."[35] As a starting point, the court "must seek to ascertain and give effect to the intention of the Legislature as expressed in the Statute itself."[36] "Words and phrases shall be read with their context and shall be construed according to the common and approved usage of the English language."[37] Consistent with that command, the Delaware Supreme Court has instructed courts to "give the statutory words their commonly understood meanings."[38]

"If a statute is unambiguous, there is no need for judicial interpretation, and the plain meaning of the statutory language controls."[39] That is, "where the language

---

[35] *Arnold v. State*, 49 A.3d 1180, 1184 (Del. 2012) (internal quotation marks omitted); *accord Eliason v. Englehart*, 733 A.2d 944, 946 (Del. 1999); *see also Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982) ("It is fundamental that the Courts ascertain and give effect to the intent of the General Assembly as clearly expressed in the language of a statute.").

[36] *Keys v. State*, 337 A.2d 18, 22 (Del. 1975); *accord Stoltz v. Wilm. Tr. Co.*, 1992 WL 127516, at *5 (Del. Ch. June 9, 1992) (Allen, C.) ("[T]he words of the statute themselves are the first and most authoritative source of the meaning of its command.") (citation omitted).

[37] 1 *Del. C.* § 303.

[38] *Kofron v. Amoco Chems. Corp.*, 441 A.2d 226, 230 (Del. 1982).

[39] *Eliason*, 733 A.2d at 946; *accord Hudson Farms, Inc. v. McGrellis*, 620 A.2d 215, 217 (Del. 1993) ("If there is no reasonable doubt as to the meaning of the words used, the statute is unambiguous and the Court's role is limited to an application of the literal meaning of the words.").

is plain and admits of no more than one meaning, the duty of interpretation does not arise, and the rules which are to aid doubtful meanings need no discussion."[40]

Only when the words of a statute "do not convey with clarity a single meaning when applied to a particular case . . . [is] a court . . . bound to interpret them."[41] A statute is ambiguous "if it is susceptible of two reasonable interpretations."[42] A statute is not ambiguous "simply because the parties disagree about [its] meaning."[43] "[A] provision may be ambiguous when applied to one set of facts but not another."[44]

When a statute is "'reasonably susceptible' of different conclusions or interpretations, [courts] normally consider extrinsic evidence, such as legislative history and any historical applications of the text at issue."[45] "[A] court may also

---

[40] *Friends of H. Fletcher Brown Mansion v. City of Wilm.*, 34 A.3d 1055, 1059 (Del. 2011) (cleaned up).

[41] *Stoltz*, 1992 WL 127516, at *5.

[42] *Taylor v. Diamond State Port Corp.*, 14 A.3d 536, 538 (Del. 2011).

[43] *Ross v. State*, 990 A.2d 424, 429 (Del. 2010).

[44] *Activision Blizzard, Inc. v. Hayes*, 106 A.3d 1029, 1034 (Del. 2013) (internal quotation marks omitted); *accord EEOC v. Curtiss-Wright Corp.*, 1982 WL 602, at *2 (D.N.J. Apr. 12, 1982) ("Statutory language is sometimes unambiguous in one context and ambiguous in another."); *Sullins v. Allstate Ins. Co.*, 667 A.2d 617, 619 (Md. 1995) ("A term which is clear in one context may be ambiguous in another.").

[45] *Jack Lingo Asset Mgmt., LLC v. Bd. of Adjustment of City of Rehoboth Beach*, 282 A.3d 29, 33 (Del. 2022).

consider how a statute evolved."[46] When the legislative history is not definitive, a court may apply canons of statutory construction to resolve ambiguities.[47] A court may also consider "the statute's apparent purpose, including relevant considerations of public policy."[48]

"In Delaware, the available legislative history is sparse and consists largely of the legislative synopsis."[49] Delaware courts also consider contemporaneous commentary from lawyers who participate in the drafting process.[50] Amendments to Delaware's entity statutes emerge from a process overseen by the Council of the

---

[46] *Salama v. Simon*, 328 A.3d 356, 389 (Del. Ch. 2024), *aff'd*, 342 A.3d 373 (Del. 2025); *see VonFeldt v. Stifel Fin. Corp.*, 714 A.2d 79, 84 (Del. 1998) (tracing development of ambiguous statute).

[47] *See Dir. of Revenue v. Verisign, Inc.*, 267 A.3d 371, 377 (Del. 2021) ("If there is a legitimate ambiguity, we consult the canons of statutory construction and may consider legislative history.").

[48] *Salama*, 328 A.3d at 388.

[49] *Id.*; *see Bd. of Adjustment of Sussex Cty. v. Verleysen*, 36 A.3d 326, 332 (Del. 2012) ("A synopsis is a proper source for ascertaining legislative intent.").

[50] *See, e.g.*, *In re Fox Corp./Snap Inc.*, 312 A.3d 636, 644 (Del. 2024) (giving weight to "[c]ontemporaneous commentary from two members of the Delaware Corporation Law Revision Committee, Samuel Arsht and Walter Stapleton"); *Cede & Co. v. Technicolor, Inc.*, 758 A.2d 485, 495 n.59 (Del. 2000) (citing practitioner commentary on 1976 amendments to appraisal statute); *Klotz v. Warner Commc'ns, Inc.*, 674 A.2d 878, 881–82 (Del. 1995) (considering "commentaries written at the time the market exception and § 228 were added to Title 8 in 1967"); *Garfield v. Boxed, Inc.*, 2022 WL 17959766, at *5 n.41 (Del. Ch. Dec. 27, 2022) (considering "[c]ontemporaneous legal commentary on Section 242's language").

Corporation Law Section of the Delaware State Bar Association (the "Council").[51] The lawyers who serve as members of the Council and their firms issue client memoranda and other forms of commentary about statutory amendments.[52] Those materials "provide insight into the Council's purpose and the public policy considerations its members found persuasive."[53]

The Safe Harbor Statute followed a modified path.[54] Former Chief Justice Leo E. Strine, Jr., former Chancellor William B. Chandler, III, and professor emeritus Lawrence A. Hamermesh led an initial process in conjunction with attorneys from Richards, Layton & Finger, P.A. ("RLF").[55] They then worked with the Council to

---

[51] *See* Marcel Kahan & Edward Rock, *The New Political Economy of Delaware Corporate Lawmaking*, 51 J. CORP. L. 865, 870–86 (2026) (describing the Council's traditional role); *accord Salama*, 328 A.3d at 388 ("The Council is principally (if not exclusively) responsible for drafting synopses for entity-related legislation.").

[52] That tradition emerged after the 1967 revision. *See* S. Samuel Arsht & Walter K. Stapleton, *Delaware's New General Corporation Law: Substantive Changes*, 23 BUS. LAW. 75 (1967); S. Samuel Arsht & Walter K. Stapleton, *Analysis of the New Delaware Corporation Law* 321–45 (Prentice-Hall, Inc. 1967). It has only gained strength over the years.

[53] *Salama*, 328 A.3d at 388 (noting that "[l]aw firms whose partners serve on the Council issued memoranda discussing the 2023 Amendments").

[54] *See* Klinger-Wilensky et al., *supra*, at 3 n.5 (noting that the Safe Harbor Statute "did not follow [Delaware's] typical process").

[55] *See* Jacob Owens & Karl Baker, *A Deep Dive into Landmark Changes in Corporate Law*, DEL. BUS. NOW (Feb. 19, 2025), https://www.delawarebusinessnow.com/news/spotlight_delaware/a-deep-dive-into-landmark-changes-in-corporate-law/article_211743a2-ef24-11ef-aa4c-bb1dc8e970d1.html#google_vignette [https://perma.cc/9CLH-P6TW] (discussing Strine, Chandler, and Hamermesh's leadership role); *accord* Lawrence Hamermesh & William Chandler III*, Delaware's Corporate Law, Proposed Amendments Play Fair*,

prepare the final bill.[56] The General Assembly passed the bill, and the Governor signed the Safe Harbor Statute into law.[57]

An article that Chief Justice Strine and Professor Hamermesh co-authored with former Justice Jack B. Jacobs[58] supplied foundational concepts for the statute.[59]

DEL. BUS. TIMES (Mar. 6, 2025), https://delawarebusinesstimes.com/news/viewpoint-sb21-chandler-hamermesh/ [https://perma.cc/K5HF-P4NV] (same); *see* Lisa A. Schmidt, *A Message from RLF President Lisa Schmidt* (Feb. 25, 2025), https://www.rlf.com/a-message-from-rlf-president-lisa-schmidt/ [https://perma.cc/YWF3-9TN9] ("Our elected officials invited one of our attorneys with extensive experience drafting corporate legislation to assist a group of highly respected former members of Delaware's judiciary and prominent academics to help draft measured reforms that would provide additional clarity for directors, officers, and stockholders.").

[56] *See* Klinger-Wilensky et al., *supra*, at 3 n.5 (describing the Council's involvement).

[57] *See* 85 Del. Laws ch. 6 (2025), *codified at* 8 *Del. C.* § 144.

[58] Lawrence A. Hamermesh, Jack B. Jacobs & Leo E. Strine, Jr., *Optimizing the World's Leading Corporate Law: A Twenty-Year Retrospective and Look Ahead*, 77 BUS. LAW. 321 (2022) [hereinafter *Optimizing*].

[59] *See* Owens & Baker, *supra* ("Delaware leaders turned toward a scholarly paper written by former Chancellor Leo Strine Jr., Vice Chancellor Jack Jacobs and Delaware Law School professor Lawrence Hamermesh that largely laid out many of the proposed changes that ultimately ended up in Townsend's bill."); Hamermesh & Chandler, *supra* (citing the *Optimizing* article as the source of "the principles underlying the current legislation"); *see also* Schmidt, *supra* (submission to Delaware General Assembly stating that S.B. 21 sought to address issues identified in the *Optimizing* article). In some respects, such as the possibility of single-cleansing for controller transactions, the *Optimizing* article synthesized concepts that had been prominent for years. The *Optimizing* article served a valuable function for the statutory amendments by collecting and arguing for a combination of initiatives.

RLF[60] and Wilson Sonsini Goodrich & Rosati,[61] issued significant contemporaneous commentary, as did other law firms with Council representatives.[62] Those materials provide probative indications of legislative intent.

---

[60] *See* Richards, Layton & Finger, P.A., *Proposed Legislation to Amend the Delaware Corporation Law* (Feb. 18, 2025) [hereinafter RLF, *Proposed Legislation*], https://www.rlf.com/proposed-legislation-to-the-delaware-corporation-law/ [https://perma.cc/S23R-5TAG]; Richards, Layton & Finger, P.A., *Delaware Enacts Landmark Amendments to the General Corporation Law* (Mar. 26, 2025) [hereinafter RLF, *Delaware Enacts Amendments*], https://www.rlf.com/delaware-enacts-landmark-amendments-to-the-general-corporation-law/ [https://perma.cc/32M2-RDU8]; Richards, Layton & Finger, P.A., *Overview of the DGCL's Newly-Enacted Safe Harbor Procedures and Books and Records Regime* (Apr. 2, 2025) [hereinafter RLF, *Overview of Safe Harbors*], https://www.rlf.com/overview-of-the-dgcls-newly-enacted-safe-harbor-procedures-and-books-and-records-regime/ [https://perma.cc/P9YU-DNH8]; Robert L. Burns, Mark A. Kurtz & Sara T. Wagner, *Delaware Strengthens Its Corporate Law Advantage: What Bankers Need to Know About Senate Bill 21*, DEL. BANKER, Spring 2025 [hereinafter *Corporate Law Advantage*], https://www.rlf.com/wp-content/uploads/2025/05/DB-Spring-25-RLF-Article.pdf [https://perma.cc/9Q6R-RG52].

[61] *See* Wilson Sonsini Goodrich & Rosati, *Delaware Legislators and Governor Propose Landmark Legislation* (Feb. 18, 2025) [hereinafter Wilson Sonsini, *Landmark Legislation*], https://www.wsgr.com/en/insights/delaware-legislators-and-governor-propose-landmark-legislation.html [https://perma.cc/JM7P-BA76]; Wilson Sonsini Goodrich & Rosati, *Delaware Enacts Landmark Corporate Law Amendments* (Mar. 26, 2025) [hereinafter Wilson Sonsini, *Delaware Enacts Amendments*], https://www.wsgr.com/en/insights/delaware-enacts-landmark-corporate-law-amendments.html [https://perma.cc/CJE6-P8V6].

[62] *See, e.g.*, Klinger-Wilensky et al., *supra*; Morris, Nichols, Arsht & Tunnell LLP, *Delaware Adopts Safe Harbor Protections for Directors and Controlling Stockholders* (May 13, 2025), https://www.morrisnichols.com/insights-delaware-adopts-safe-harbor-protections-for-directors-and-controlling-stockholders [https://perma.cc/99TH-YGTQ]; Edward B. Micheletti & Jenness E. Parker of Skadden, Arps, Slate, Meagher & Flom LLP, *Delaware Tells Companies: 'Let's Stay Together'*, HARV. L. SCH. F. on CORP. GOV. (May 23, 2025), https://www.skadden.com/-/media/files/publications/2025/05/delaware_tells_companies_lets_stay_together.pdf?rev=ce1babcacfad47e9af8f4af29322c2e1 [https://perma.cc/DB6X-WJBH]; *see also* Am. Bar Ass'n Bus. L. Section, *A Sea Change for Transactions Involving Controlling*

A. Does TA Satisfy The Non-Majority Trigger?

The plaintiffs allege that TA satisfies the Non-Majority Trigger. That argument fails because it is not reasonably conceivable that TA clears the One-Third Floor.

1. The One-Third Floor Calculation

The One-Third Floor requires that a stockholder own or control at least one third of the "voting power of the outstanding stock of the corporation entitled to vote generally in the election of directors or in the election of directors who have a majority in voting power of all directors on the board of directors" (the "Eligible Shares").[63] By defining the Eligible Shares in terms of voting power, the One-Third Floor provides a clear and predictable measuring stick. Determining whether a stockholder clears the One-Third Floor requires knowing (1) the total voting power of the Eligible Shares outstanding and (2) the voting power carried by the Eligible Shares that the stockholder owns.

Quantifying those inputs requires identifying the shares that qualify as Eligible Shares. A corporation's certificate of incorporation must identify the shares of stock that the corporation is authorized to issue.[64] The certificate of incorporation

---

Stockholders: New Delaware Law Section 144 at 22 (Sep. 19, 2025) [hereinafter *Sea Change*], https://www.youngconaway.com/content/uploads/2023/09/ABA-CLE-Controlling-SH_-DGCL-144-Changes-Fall-2025-BLS.pdf [https://perma.cc/5VAM-W83Z].

[63] 8 *Del. C.* § 144(e)(2)(c).

[64] *See* 8 *Del. C.* § 102(a)(4).

must also specify the rights appurtenant to those shares.[65] By statute, however, the DGCL is part of every certificate of incorporation,[66] and the DGCL sets out rights that shares possess by default ("default rights"). Those rights are automatically incorporated into the certificate of incorporation. By default, each share carries one vote on all matters, including the election of directors.[67]

A certificate of incorporation can make default rights express, but it need not do so. A charter can also enhance a default right (make it stronger) and turn it into a superior right, such as by conferring greater than one vote per share. Or a charter can limit or qualify a default right (make it weaker) and turn it into an inferior right, such as by conferring a fractional vote per share. Some default rights, including the right to vote, can be eliminated.[68] Because superior rights and inferior rights depart from default rights, they can be thought of as "special attributes."[69]

---

[65] *See* 8 *Del. C.* § 102(a)(4); 8 *Del. C.* § 151.

[66] 8 *Del. C.* § 394.

[67] *See* 8 *Del. C.* § 212(a).

[68] 8 *Del. C.* § 151(a) (providing that shares can have "no voting powers"). At least one class of stock must have voting rights that so that the corporation can fulfill its obligation to hold an annual meeting to elect directors. *See* 8 *Del. C.* § 211.

[69] *Colon v. Bumble, Inc.*, 305 A.3d 352, 359 (Del. Ch. 2023). A charter can also grant new rights to a class of shares that are not based on default rights, or a charter can impose new qualifications or limitations on a class of shares that are not tied to default rights. 8 *Del. C.* § 102(a)(4). "Those are also special attributes." *Colon*, 305 A.3d at 359.

If a corporation is authorized to issue stock that only has default rights, the certificate of incorporation need only state the number of shares that the corporation can issue and their par value.[70] The DGCL offers two avenues for authorizing a corporation to issue stock with special attributes. The certificate of incorporation can specify the special attributes directly, or the certificate of incorporation can authorize the board to determine what special attributes the shares will have in a certificate of designations filed at a later date.[71] If authorized by the certificate of incorporation, the board may confer voting rights on the shares it authorizes.[72] These provisions

---

[70] 8 *Del. C.* § 102(a)(4) ("If the corporation is to be authorized to issue only 1 class of stock, the total number of shares of stock which the corporation shall have authority to issue and the par value of each of such shares, or a statement that all such shares are to be without par value. If the corporation is to be authorized to issue more than 1 class of stock, the certificate of incorporation shall set forth the total number of shares of all classes of stock which the corporation shall have authority to issue and the number of shares of each class and shall specify each class the shares of which are to be without par value and each class the shares of which are to have par value and the par value of the shares of each such class.").

[71] *Id.* ("The certificate of incorporation shall also set forth a statement of the designations and the powers, preferences and rights, and the qualifications, limitations or restrictions thereof, which are permitted by § 151 of this title in respect of any class or classes of stock or any series of any class of stock of the corporation and the fixing of which by the certificate of incorporation is desired").

[72] *See* 8 *Del. C.* § 151(a) ("Every corporation may issue 1 or more classes of stock or 1 or more series of stock within any class thereof, any or all of which classes may be of stock with par value or stock without par value and which classes or series may have such voting powers, full or limited, or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and qualifications, limitations or restrictions thereof, as shall be stated and expressed in the certificate of incorporation or of any amendment thereto, or in the resolution or resolutions providing for the issue of such stock adopted by the board of directors pursuant to authority expressly vested in it by the provisions of its certificate of incorporation.").

work together to ensure that any departure from the default rule of one vote per share appears in the certificate of incorporation.[73]

The certificate of incorporation thus determines which shares have voting power. If the charter is silent on whether shares carry voting power, then those shares carry one vote each. If the charter specifies the amount of voting power that the shares carry, then each share carries that amount.

The Company's certificate of incorporation (the "Charter") authorized the Company to issue common stock and preferred stock.[74] As is customary, the Charter made the default voting right of one vote per share express by providing that each share of common stock carries one vote per share.[75] The Charter authorized the Board to determine the rights associated with the preferred stock, but the Board had not authorized any preferred stock with voting rights during the relevant period. Consequently, the only Eligible Shares are the shares of common stock.

The next task is to determine the number of Eligible Shares that are outstanding. The concept of "outstanding stock" means "[t]he shares currently held

---

[73] *See Colon*, 305 A.3d at 359–60.

[74] Ex. 5 at Ex. 3.2, Art. IV ("The total number of shares of all classes of stock that the Corporation shall have authority to issue is 755,000,000 shares, consisting of (i) 750,000,000 shares of Common Stock, $0.01 par value per share ('Common Stock'), and (ii) 5,000,000 shares of Preferred Stock, $0.01 par value per share ('Preferred Stock').").

[75] *Id.* at Art. IV.A.2 ("The holders of the Common Stock shall have voting rights at all meetings of stockholders, each such holder being entitled to one vote for each share thereof held by such holder").

by stockholders."[76] That concept excludes unissued shares and treasury shares.[77] The Company had issued 422,194,725 shares of common stock, resulting in that number of Eligible Shares.

If there were multiple types of Eligible Shares carrying different levels of voting power, then some math would be necessary. With one vote per share, the number of Eligible Shares outstanding is the same as the voting power carried by the Eligible Shares outstanding.

TA held 124,289,200 shares of common stock, resulting in an equivalent amount of voting power. TA therefore owned 29.4% of the voting power carried by the Eligible Shares.[78] That percentage of voting power falls short of the One-Third Floor.

2. The Warrant Arguments

The plaintiffs argue that TA owned 35.7% of the voting power carried by Eligible Shares, clearing the One-Third Floor. In calculating that figure, the plaintiffs deviate from the Safe Harbor Statute's formula.

To support their higher figure, the plaintiffs rely on TA's ownership disclosures filed with the U.S. Securities and Exchange Commission. Those filings identify the

---

[76] *Moran v. Unation, Inc.*, 2025 WL 3706330, at *21 (Del. Ch. Dec. 22, 2025); *accord Sjunde AP-Fonden v. Activision Blizzard, Inc.*, 2025 WL 2803254, at *33 n.208 (Del. Ch. Oct. 2, 2025); *see* Jeffrey J. Haas, *Corporate Finance in a Nutshell* 44 (2004).

[77] *Atterbury v. Consol. Coppermines Corp.*, 20 A.2d 743, 747 (Del. Ch. 1941) (explaining that outstanding stock means "stock in the hands of shareholders, not stock in the treasury")

[78] 124,289,200 / 422,194,725 = 0.294.

shares TA "beneficially owned," not the shares owned for purposes of the One-Third Floor. The pertinent regulations define a beneficial owner to include "any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares: (1) [v]oting power which includes the power to vote, or to direct the voting of, such security; and/or (2) [i]nvestment power which includes the power to dispose, or to direct the disposition of, such security."[79] When making its ownership disclosures in SEC filings, TA disclosed "124,289,200 shares of Common Stock and 40,464,855 shares of Common Stock issuable upon exercise of the Warrant."[80]

The One-Third Floor speaks in terms of "ownership or control of at least ⅓ in voting power."[81] The Safe Harbor Statute does not define the concepts of "ownership or control," and in some contexts, those terms could be ambiguous. For present purposes, the only question is whether those terms extend to warrants that do not carry voting power; TA could only obtain voting power through the warrants by exercising them and receiving shares.

A statute operates against the backdrop of the common law. "Where a statute uses words which have a commonly accepted meaning at common law, absent a

---

[79] 17 C.F.R. § 240.13d-3(a).

[80] Ex. 56 at 2.

[81] 8 *Del. C.* § 144(e)(2)(c).

showing to the contrary, it is presumed the word is used in the sense which it is understood at common law."[82]

As a matter of Delaware common law, TA's warrants do not confer ownership or control over the voting power associated with the shares TA would receive after exercising the warrants. The Delaware Supreme Court has held that "the 'convertibility feature' of warrants does not impart stockholder status unless and until the warrant is converted."[83] Other decisions have similarly held that securities convertible into shares do not carry the rights that would be associated with the shares until conversion takes place.[84]

---

[82] *Stiftel v. Malarkey*, 384 A.2d 9, 22 (Del. 1977) (Quillen, J., dissenting) (citations omitted); *see Gurney-Goldman v. Goldman*, 321 A.3d 559, 581 (Del. Ch. 2024) (collecting authorities), *aff'd*, 360 A.3d 270 (Del. 2026).

[83] *Aspen Advisors LLC v. United Artists Theatre Co.*, 861 A.2d 1251, 1263 (Del. 2004); *accord id.* at 1262 ("A warrantholder is not a stockholder. Warrantholders have paid for an option. They have a choice: whether to take an investment risk or not. A warrantholder only becomes a shareholder by investing something of value that meets the exercise terms of the warrant.").

[84] *See Simons v. Cogan*, 549 A.2d 300, 303 (Del. 1988) (rejecting argument that convertible debentures carried the equitable rights associated with the stock they could be converted into; "a convertible debenture represents a contractual entitlement to the repayment of a debt and does not represent an equitable interest in the issuing corporation necessary for the imposition of a trust relationship with concomitant fiduciary duties"); *id.* at 304 ("Until the debenture is converted into stock the convertible debenture holder acquires no equitable interest, and remains a creditor of the corporation whose interests are protected by the contractual terms of the indenture."); *Neem Int'l CV v. Shulman*, 2025 WL 3778917, at *18 (Del. Ch. Dec. 31, 2025) (declining to include convertible securities when calculating "the number of outstanding shares and ownership percentage of existing stockholders" for purposes of a conversion mechanism).

For purposes of the One-Third Floor, the warrants do not confer "ownership or control" over voting power. They are properly excluded from the Eligible Shares. The SEC's beneficial ownership rules use a different concept of beneficial ownership that does not govern for purposes of the Safe Harbor Statute.

The plaintiffs advance a similar argument based on the TA Agreement. The definition of Ownership Threshold under that agreement incorporates TA's warrants, and the plaintiffs argue that the definition means that "the parties all believed and acted like the conversion of the TA Warrants into [Company] shares factored into TA's control of [the Company]."[85]

It is not reasonably conceivable that the parties intended for the Ownership Threshold definition to confer "ownership or control" of voting power in the sense contemplated by the One-Third Floor. The Ownership Threshold definition looks to the Ownership Percentage held by TA. The Ownership Percentage determines the level of rights that TA possesses under the TA Agreement, including the number of directors that TA can nominate to the Board. The TA Agreement uses the Ownership Percentage to cause the number of directors that TA can nominate to scale with TA's economic interest. The TA Agreement does not use the Ownership Threshold definition to confer any voting power on TA.

This decision need not address whether parties could agree to treat particular securities as constituting the "ownership or control of . . . voting power" for purposes

---

[85] AB at 37.

of the One-Third Floor. The TA Agreement does not make the attempt, and that is enough to reject the plaintiffs' reliance on the TA Agreement.

3. The Timing Argument

The plaintiffs make a final attempt to argue that TA cleared the One-Third Floor based on TA's warrants. Just before "the mystical singularity of the effective time,"[86] TA exercised its warrants and obtained actual ownership and control over the resulting shares for the briefest of moments before those shares were converted into the right to receive the merger consideration. The plaintiffs argue that TA therefore cleared the One-Third Floor. In substance, the plaintiffs argue for measuring the One-Third Floor at closing.

The Controller Definition does not address when compliance with its triggers should be measured, but here again, the statute operates against a backdrop of existing Delaware common law. When evaluating when plaintiffs acquired shares and gained standing to sue corporate fiduciaries for allegedly breaching their duties, Delaware decisions have focused on the time of the fiduciary act or decision, not when the transaction that eventually resulted from the act or decision was complete.[87]

---

[86] *In re BankAtlantic Bancorp, Inc. Litig.*, 39 A.3d 824, 835 (Del. Ch. 2012).

[87] *See 7547 P'rs v. Beck*, 682 A.2d 160, 162–63 (Del. 1996) ("The Amended Complaint . . . alleges that Boston Chicken's principal executive officers learned, during the IPO pricing negotiations, that there was an extraordinary demand for Boston Chicken stock. They misused that information by deciding to sell themselves stock in the Private Placement at a price the directors allegedly knew would be well below market price. . . . Thus, Partners must establish that it was a stockholder of Boston Chicken at the time the terms of the Private Placement were established."); *In re Smiledirectclub, Inc. Deriv. Litig.*, 2021 WL 2182827, at *8 (Del. Ch. May 28,

Although issued in the context of decisions on standing, those opinions address the relationship between stock ownership and fiduciary breach. That approach contrasts with the statutory determination of fair value under the appraisal statute, where the DGCL calls for determining the corporation's going concern value and the plaintiff's proportionate share of that value as of closing.[88]

Here, the plaintiffs complain that the TA Defendants' breaches of fiduciary duty forced the Company's unaffiliated stockholders into an unfair transaction. The resulting injury manifested at the effective time, when the 2024 Merger closed. The fiduciary duty breaches, however, allegedly took place at the time of contracting when the terms of the 2024 Merger were set, and during the period leading up to the time of contracting.

2021) ("Where the plaintiff complains of the transaction's terms, rather than the technicalities of its actual consummation, the 'time of the challenged transaction' is the time when the transaction's terms were established."), *aff'd*, 270 A.3d 239 (Del. 2022); *Dieter v. Prime Comput., Inc.*, 681 A.2d 1068, 1072 (Del. Ch. 1996) ("It is not the Merger that constitutes the wrongful act of which Plaintiffs complain; it is the fixing of the terms of the transaction) (internal quotation marks omitted); *Newkirk v. W.J. Rainey, Inc.*, 76 A.2d 121, 123 (Del. Ch. 1950) (Seitz, V.C.) ("The allegation of a conspiracy cannot obscure the hard fact that the stock purchases are the wrongs which plaintiffs want rectified. Once it is decided, and I so decide, that the stock purchases are the 'transactions' of which plaintiffs complain, it almost necessarily follows under the undisputed facts that such transactions were consummated prior to the date plaintiffs acquired their stock.").

[88] *See Brigade Leveraged Cap. Structures Fund Ltd. v. Stillwater Mining Co.*, 240 A.3d 3, 17 (Del. 2020) ("The time for determining the value of a dissenter's shares is the date on which the merger closes."); *Merion Cap. L.P. v. Lender Processing Servs., Inc.*, 2016 WL 7324170, at *23 (Del. Ch. Dec. 16, 2016) ("The valuation date for purposes of an appraisal, however, is not the date on which the Merger Agreement was signed, but rather the date on which the merger closes.").

For purposes of evaluating whether TA satisfied the Controller Definition and owed fiduciary duties, the operative time is the point of breach, not the later point when the injury manifested. During the period leading up to the merger agreement and at the time of contracting, TA owned or controlled 29.4% of the voting power carried by the Eligible Shares. That number fell short of the One-Third Floor.

The plaintiffs therefore have failed to plead facts that would make it reasonably conceivable that TA cleared the One-Third Floor. The Stock-Majority Trigger does not apply.

B. Does TA Satisfy The Board-Majority Trigger?

The plaintiffs separately argue that TA satisfies the Board-Majority Trigger. Although the Board-Majority Trigger is ambiguous on the key points, evidence of legislative intent resolves the disputes in the plaintiffs' favor. The plaintiffs have adequately pled that TA is a controlling stockholder by virtue of satisfying the Board-Majority Trigger.

The Board-Majority Trigger asks whether a stockholder "[h]as the right, by contract or otherwise, to cause the election of nominees who are selected at the discretion of such person" and who comprise a board majority.[89] The plaintiffs make a straightforward argument: the Majority-Nomination Right satisfies the statutory test. This decision need not consider whether the Majority-Nomination Right

[89] 8 *Del. C.* § 144(e)(2)(b).

standing alone would be enough, because the TA Agreement also includes the Efforts Obligation. Those two provisions in combination satisfy the Board-Majority Trigger.

1. The Election Requirement

To defeat the Board-Majority Trigger, TA points to the requirement that the party have "the right . . . to cause the election of [its] nominees" (the "Election Requirement"). Although that provision is ambiguous, the legislative history indicates that TA has the necessary power.

The defendants read the Election Requirement to require the ability to make the election of nominees a *fait accompli*. The plaintiffs read the Election Requirement to mean the functional ability to elect nominees. Both readings are reasonable, rendering the Election Requirement ambiguous. Scholars have also viewed the language as ambiguous, describing its terms as "vague and perhaps inapt."[90] As they note, governance agreements "are not generally framed" in terms of a right to "cause the election" of nominees.[91]

---

[90] Jill E. Fisch & Steven Davidoff Solomon, *Contract Rights and Control*, 27 U. PA. J. BUS. L. 1128, 1145 (2025) [hereinafter *Contract Rights*]. The *Contract Rights* article contains contestable assertions about the historical content of Delaware's controlling stockholder law. *See id.* at 1135–41. For a different view, *see Historical Article*, *supra*, at 84–96; J. Travis Laster, *Not New: A Response To Claims About "New Control" in Control and its Discontents,* ___ VA. L. & BUS. REV. ___ (2026) (forthcoming), *https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6604058*.

[91] *Contract Rights*, *supra*, at 1145; *see* Gladriel Shobe et al., *Private Equity and Stockholder Agreements: Empirical Insights for the Moelis Debate*, HARV. L. SCH. F. on CORP. GOV. (Apr. 14, 2025) ("[O]ur research examined contractual control rights among 1,362 companies and did not find any instances where an insider had the right to 'cause the election' of their nominees. Although many stockholder agreements, including the one at issue in the *Moelis* case, allow insiders to nominate members of

The evolution of the Controller Definition provides the principal evidence of legislative intent. The initial version of what became the Safe Harbor Statute contained a different version of the Controller Definition (the "Initial Definition"). It stated:

> "Controlling Stockholder" means any person that, together with such person's affiliates and associates:
>
> a. Owns or controls a majority in voting power of the outstanding stock of the corporation entitled to vote generally in the election of directors; or
>
> b. Has the power functionally equivalent to that of a stockholder that owns or controls a majority in voting power of the outstanding stock of the corporation entitled to vote generally in the election of directors by virtue of ownership or control of at least one-third in voting power of the outstanding stock of the corporation entitled to vote generally in the election of directors or for the election of directors who have a majority in voting power of the votes of all directors on the board of directors and power to exercise managerial authority over the business and affairs of the corporation.[92]

The Initial Definition did not include the Board-Majority Trigger.

The Council worked with the bill's original proponents to produce the final version of the Safe Harbor Statute with the Controller Definition. The following text shows the additions and deletions:

> "Controlling Stockholder" means any person that, together with such person's affiliates and associates:
>
> a. Owns or controls a majority in voting power of the outstanding stock of the corporation entitled to vote generally in the election of

---

the board, we found that those nominees are always voted on by stockholders generally.").

[92] Del. S.B. 21, 153d Gen. Assem. (2025).

directors or in the election of directors who have a majority in voting power of the votes of all directors on the board of directors;

b. Has the right, by contract or otherwise, to cause the election of nominees who are selected at the discretion of such person and who constitute either a majority of the members of the board of directors or directors entitled to cast a majority in voting power of the votes of all directors on the board of directors; or

~~b~~c. Has the power functionally equivalent to that of a stockholder that owns or controls a majority in voting power of the outstanding stock of the corporation entitled to vote generally in the election of directors by virtue of ownership or control of at least ~~one third~~ ⅓ in voting power of the outstanding stock of the corporation entitled to vote generally in the election of directors or ~~for~~ in the election of directors who have a majority in voting power of the votes of all directors on the board of directors and power to exercise managerial authority over the business and affairs of the corporation.

The revised definition thus added the Board-Majority Trigger.

The Initial Definition tracked the *Optimizing* article's positions that (1) stockholder status should be necessary for any a finding of control that could give rise to fiduciary duties,[93] (2) control should flow from the rights associated with the stockholder's shares,[94] and (3) courts should not consider any contract rights a party possesses when assessing control.[95] The addition of the Board-Majority Trigger, by

---

[93] *Optimizing*, *supra*, at 348 (criticizing *In re Pattern Energy Gp. S'holder Litig.*, 2021 WL 1812674 (Del. Ch. May 6, 2021), for contemplating that control could exist without stock ownership).

[94] *Id.* (criticizing *Basho Techs. Holdco B, LLC v. Georgetown Basho Invs., LLC*, 2018 WL 3326693 (Del. Ch. July 6, 2018), *aff'd sub nom. Davenport v. Basho Techs. Holdco B, LLC*, 221 A.3d 100 (Del. 2019), for considering sources of influence beyond stock ownership).

[95] *Id.* (arguing against any "premise of control [that] involves circumstances that reflect garden variety commercial dealings"); *see* Wilson Sonsini, *Landmark*

contrast, inferably reflects the Council's experience the prior year with an amendment to the DGCL that provided broad authorization for governance agreements (the "Governance Agreement Statute").[96] The Court of Chancery had issued decisions addressing the statutory validity of contracts that conferred governance rights.[97] In *Moelis*, the principal case, the governance agreement (1) granted the counterparty the right to select a majority of the directors who would serve on the board and (2) required the counterparty's pre-approval for eighteen categories of board-level action covering "virtually any action the directors might want to take."[98] Although the cases involved statutory challenges, the governance rights had implications for control and fiduciary duties.

The Council moved quickly to eliminate any uncertainty about the statutory validity of the governance provisions at issue in *Moelis*, resulting in the Governance Agreement Statute. Its legislative synopsis stressed that the statute did not relieve "any directors, officers, or stockholders of any fiduciary duty they owe to the corporation or its stockholders," including "with respect to deciding whether to

---

Legislation, *supra*, (criticizing pre-Safe Harbor Statute case law that "constrained controlling stockholders when exercising voting rights or contractual veto rights").

[96] *See* 84 Del. Laws ch. 309 (2024), *codified at* 8 *Del. C.* § 122(18).

[97] *See Wagner v. BRP Grp., Inc.*, 316 A.3d 826 (Del. Ch. 2024), *rev'd,* 2026 WL 1256588 (Del. May 7, 2026) (TABLE); *Seavitt v. N-Able, Inc.*, 321 A.3d 516 (Del. Ch. 2024); *W. Palm Beach Firefighters' Pension Fund v. Moelis & Co.*, 311 A.3d 809 (Del. Ch. 2024).

[98] *Moelis*, 311 A.3d at 826.

perform, or cause the corporation to perform, or to breach, the contract."[99] The Governance Agreement Statute thus envisioned a broadly empowering statute, policed through equitable review and the enforcement of fiduciary duties. The Initial

---

[99] Del. S.B. 313 syn., 152d Gen. Assem. (2024) ("New § 122(18) does not relieve any directors, officers or stockholders of any fiduciary duties they owe to the corporation or its stockholders, including with respect to deciding to cause the corporation to enter into a contract with a stockholder or beneficial owner of stock and with respect to deciding whether to perform, or cause the corporation to perform, or to breach, the contract, whether in connection with their management of the corporation's business and affairs in the ordinary course or their approval of extraordinary transactions, such as a sale of the corporation. New § 122(18) also does not affect the case law empowering a court to grant equitable relief in respect of a contract, such as when a contract is set aside because the counterparties thereto have aided and abetted a breach of fiduciary duty or when a court reviews director actions under an enhanced form of judicial scrutiny. See e.g. Paramount Communications Inc. v. QVC Network Inc., 637 A.2d 34 (Del. 1994); ACE Limited v. Capital Re Corporation, 747 A.2d 95 (Del. Ch. 1999). Instead, the amendments are intended to promote a policy of granting such relief based on the application of equitable principles, including equitable principles relating to fiduciary duties and public policy.").

Whether Delaware law supported that position was arguable, but for purposes of assessing legislative intent, that debate is not important. What matters is that the General Assembly understood when enacting the Governance Agreement Statute that fiduciary duties could constrain the exercise of any contract rights the statute authorized. *See* Mohsen Manesh, *A New Cardinal Precept in Corporate Law*, 86 LA. L. REV. 1, 43–53 (2025) (chronicling legislative process that produced the Governance Agreement Statute, including representations to the General Assembly that the statute would not affect fiduciary duties); *id.* at 53 (citing one of the bill's co-sponsors stating "fiduciary duties trump contracts, always. Fiduciary duties trump contracts always. There is nothing in this legislation that changes that."); *see also Contract Rights*, *supra, at* 1135 ("The legislation [i.e., the Governance Agreement Statute] specifically states that the extent and application of these provisions is limited by the fiduciary duties of directors, officers, and shareholders of the company. As a result, the statute leaves it to the courts to determine the applicable fiduciary principles that apply to a corporation's decision to enter into a shareholder agreement as well as circumstances under which a shareholder's exercise of its right pursuant to such an agreement might constitute a breach of fiduciary duty.") (footnotes omitted).

Definition arguably could have upset that arrangement by inferably excluding the possibly of contract-based control.

The Board-Majority Trigger suggests a compromise between one perspective that sought to eliminate the concept of contractual control and another that sought to preserve a measure of contractual control. The Board-Majority Trigger thus focuses narrowly on the "right, by contract or otherwise, to cause the election of" a board majority. In doing so, it singles out the strongest power a majority stockholder can exercise and hence the most potent version of contractual control.[100] At the same time, the Board-Majority Trigger *only* addresses the right to cause the election of a board majority. Consistent with the view that contractual control should be limited, the Board-Majority Trigger does not reference other potential sources of contractual control, like covenants, pre-approval requirements, or vetoes.

The Board-Majority Trigger thus has a narrow focus, but was inferably intended to ensure that a person possessing that form of contractual control owes

---

[100] *See Historical Article*, *supra,* at 9 ("Technically, the holder of a majority of the voting power has no direct authority over the corporation. The holder can elect and remove directors and adopt bylaws. The holder can also veto major transactions that the board initiates and that require stockholder approval. But that's it. The majority stockholder's power is largely indirect and flows from the ability to intervene and replace directors who do not sufficiently accommodate the majority stockholder's preferences"); *accord* Deborah A. DeMott, *The Mechanisms of Control*, 13 CONN. J. INT'L L. 233, 236 (1999) ("Shareholders' control is often latent and indirect in form. . . . Holding a majority of voting power does not in itself place a shareholder in a position of active control. If the shareholder assumes no additional role within the corporation, the shareholder is not a direct participant in operational decisions or in the formulation of strategic policy. Nonetheless, shareholders hold power to control in a latent form because they may be able to remove directors, and in all events may replace the incumbents if they resign or when their terms expire.").

fiduciary duties. The Board-Majority Trigger also resulted from the Council's involvement, and the members of the Council are sophisticated Delaware lawyers who are finely attuned to how the DGCL operates.[101] Lawyers so conversant with the technical requirements of Delaware law would not have missed the distinction between a nomination right and the ability to cause the election of directors. Majority stockholders can cause the election of directors by taking action by written consent, unless the charter eliminates that right.[102] A party with the charter-based power to designate a director can likewise effect that director's election.[103] Otherwise, stockholders cause the election of directors by casting sufficient votes.

The Board-Majority Trigger, however, expressly refers to the right to cause the election of directors "by contract or otherwise."[104] A charter-based power to designate directors who can wield a majority of the director voting power fits within the "or otherwise." The Council and the General Assembly must have envisioned that some combination of contract-based nomination rights would satisfy the Board-Majority Trigger.

---

[101] Witness the other principal modification to the Initial Definition, which involved expanding references to voting power in the election of directors generally to add scenarios involving the election of directors who could exercise a majority of the board's voting power. The DGCL permits a certificate of incorporation to grant directors differential voting power, but that is a little used option. *See* 8 *Del. C.* § 141(d). The revised Controller Definition accounts for it.

[102] *See* 8 *Del. C.* § 228.

[103] *See* 8 *Del. C.* § 141(d).

[104] 8 *Del. C.* § 144(e)(2)(b).

Here again, the prior year's experience with the Governance Agreement Statute suggests what the Council could have been envisioning. The suite of rights in *Moelis* (i) entitled the counterparty to nominate designees for a majority of the seats on the board and (ii) required the corporation to take "all reasonable actions" to elect the counterparty's nominees.[105] The trial court upheld those requirements.[106]

Moelis captured the Council's attention and led to the enactment of the Governance Agreement Statute.[107] It therefore seems likely that a combination of provisions similar to those in the *Moelis* agreement should satisfy the Election Requirement. The TA Agreement includes both the Majority-Nomination Right and the Efforts Obligation. That combination is sufficient.[108]

The TA Defendants respond that the Election Requirement must also include the power to elect a board majority that would be able to decide the outcome of the

---

[105] *Moelis*, 311 A.3d at 870–72, 875.

[106] The trial court invalidated as void a third provision that required the incumbent directors to recommend the election of the counterparties' nominees. *Id.* On appeal, the Delaware Supreme Court held that none of the provisions in the *Moelis* agreement were void, including the recommendation requirement. *Moelis & Co. v. W. Palm Beach Firefighters' Pension Fund* ("*Moelis Supreme*"), 360 A.3d 215, 230 (Del. 2026); *see Dollens v. Goosehead Ins., Inc.*, — A.3d —, —, 2026 WL 1894296, at *21 (Del. Ch. June 30, 2026) (explaining that the logic of *Moelis Supreme* leads to the conclusion that "the Moelis Recommendation Provision . . . could be implemented using Section 102(b)(1)" and therefore a recommendation requirement in a governance agreement was not void).

[107] *See* Del. S.B. 313, 152d Gen. Assem. (2024), *codified at* 8 *Del. C.* § 122(18).

[108] Perhaps something short of that package could satisfy the Election Requirement, such as a majority-nomination right standing alone. This decision need not answer that question.

transaction under challenge. TA posits that once it opted not to nominate a majority of the Board, it had no power to change the Board's composition in advance of an upcoming vote. TA argues that only a transaction-specific power to elect a board majority is sufficient to satisfy the Election Requirement.

TA's argument does not reflect how majority control operates, whether at common law or under the Stock-Majority Trigger. Majority control did not previously require, and it does not now demand, the ability to act immediately, such as by written consent or through a charter-based designation right. Research has not revealed any case that rejected a finding of majority control based on the inability to act immediately. The same reasoning applies to the Election Requirement. What matters is the right to elect a board majority, not the ability to do so immediately.

At the Company, Article TENTH of the Charter reinforces this conclusion by eliminating the right to act by written consent.[109] Once an annual meeting has

---

[109] Ex. 5 at Ex. 3.2, Art. X ("Stockholders of the Corporation may not take any action by written consent in lieu of a meeting."). The Company's bylaws also stated that "[s]tockholders of the corporation may not take any action by written consent in lieu of a meeting." Ex. 5 at Ex. 3.3 § 1.13. That provision conflicts with Section 228 of the DGCL, which requires that a restriction to the power to act by written consent be contained in a corporation's charter. *See* 8 *Del. C.* § 228(a) ("*Unless otherwise provided in the certificate of incorporation*, any action required by this chapter to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the corporation in the manner required by this section.") (emphasis added). Under *Moelis Supreme*, the provision is

passed, a majority stockholder could not act immediately to replace a majority of the Board. Neither the Charter nor the Company's bylaws authorize stockholders to call special meetings. A majority stockholder would have to wait until the next annual meeting or ask someone with the power to call a special meeting—the Board, Chairman, or CEO—for help.[110] For purposes of the timing of an electoral intervention to change the Board, the Majority-Nomination Right put TA in the same position as a majority stockholder.

TA's argument also fails because it seeks to invoke a variant of transaction-specific control. As TA sees it, only a right that can deliver transaction-specific control can satisfy the Election Requirement. The Controller Definition does not expressly address transaction-specific control, but the legislative history establishes an intent to foreclose inquiry into its existence.[111] A plaintiff cannot seek to establish controlling-stockholder status by asserting transaction-specific control, and a

---

voidable rather than void, because the provision hypothetically could appear in the Charter.

[110] *See* Ex. 5 at Ex. 3.2, Art. XI ("Special meetings of stockholders for any purpose or purposes may be called at any time by the Board of Directors, the Chairman of the Board or the Chief Executive Officer, but such special meetings may not be called by any other person or persons."); Ex. 5 at Ex. 3.3, § 1.3 ("[S]pecial meetings of stockholders for any purpose or purposes may be called at any time only by the Board of Directors, the Chairman of the Board or the Chief Executive Officer, and may not be called by any other person or persons.").

[111] *See* RLF, *Overview of Safe Harbors*, *supra*, (interpreting Controller Definition to reject concept of transaction-specific control); Klinger-Wilensky et al., *supra*, at 14 n.51 (same). Both sources discuss the Non-Majority Trigger. The same reasoning applies to the Board-Majority Trigger.

defendant who otherwise satisfies the Board-Majority Trigger cannot avoid controlling-stockholder status by asserting a lack of transaction-specific control.

The Majority-Nomination Right and the Efforts Obligation satisfy the Election Requirement.

2. The Discretion Requirement

To defeat the Board-Majority Trigger, TA also points to its requirement that nominees be "selected at the discretion of such person" (the "Discretion Requirement"). TA argues that it lacks sufficient discretion under the Majority-Nomination Right because the Acceptability Condition and the Conditional Floor limit whom it can select. For purposes of the Acceptability Condition and the Conditional Floor, the Discretion Requirement is not ambiguous, and its plain language establishes that those provisions do not negate it.

a. The Acceptability Condition

The plain language of the Discretion Requirement accommodates the Acceptability Condition. It requires that TA's nominees be "reasonably acceptable" to the Nominating Committee. TA thus must use its nomination right to appoint someone who could reasonably serve as a director. Likewise, the Nominating Committee must act reasonably in assessing acceptability. If TA proposes a nominee who could reasonably serve, and the Nominating Committee rejects that nominee, then TA could assert that the Company had breached the TA Agreement because the Nominating Committee acted unreasonably.

Just as a legislature that uses common law terms inferably intends their common law meaning, so too a legislature presumptively acts against the backdrop

of established law and common law doctrines.[112] The legislature does not have to reinvent the wheel or build the whole car every time it drafts. Statutes operate on top of a common law superstructure, unless they modify or displace parts of it.

Through the implied covenant of good faith and fair dealing, the common law imposes a reasonableness requirement on the exercise of a discretionary contractual right.[113] A contract can make express an obligation that the implied covenant otherwise would imply; the existence of express obligations that leave no gap to fill often supplies the reason why a court declines to imply a term.[114] The Acceptability Condition makes express what background principles of law would require.

---

[112] *State v. Botluck*, 200 A.2d 424, 427 (Del. 1964) ("[T]he legislature is presumed to have enacted the legislation in question with knowledge of the existence and effect of such prior law."); *Scribner v. Chonofsky*, 310 A.2d 924, 926 (Del. Ch. 1973) (explaining that legislation is to be interpreted on the assumption that the legislature was aware of existing judicial decisions); *Lewis v. Du Pont*, 22 A.2d 832, 835 (Del. Super. Ct. 1941) ("Statutes are to be construed with reference to the existing law with which the Legislature is presumed to be familiar."); *accord Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 611 (2019) ("It is a commonplace of statutory interpretation that 'Congress legislates against the backdrop of existing law.'") (quoting *McQuiggin v. Perkins*, 569 U.S. 383, 398, n.3 (2013)); *United States v. Uriarte*, 975 F.3d 596, 602 (7th Cir. 2020) ("Congress writes statutes against the backdrop of the existing legal landscape.").

[113] *See Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 253 (Del. 2026); *accord* Restatement (Second) of Contracts § 205 (1981), Westlaw (database updated Oct. 2024).

[114] *E.g.*, *Meyers v. Zimmer Biomet Hldgs., Inc.*, 2026 WL 1194997, at *12 (Del. Ch. May 1, 2026) ("The Merger Agreement sets a contractual standard to govern Defendants' obligations post-Merger. There is no gap to fill through the implied covenant of good faith and fair dealing."); *Khan v. Warburg Pincus, LLC*, 2025 WL 1251237, at *6 (Del. Ch. Apr. 30, 2025) ("Here, the LLC Agreement explicitly addressed the matters at issue. It set out requirements to amend its terms—including

The Discretion Requirement can accommodate the Acceptability Condition. The Majority-Nomination Right does not run afoul of the Discretion Requirement because of the Acceptability Condition.[115]

b. The Conditional Floor

The plain language of the Discretion Requirement also accommodates the Conditional Floor. It applies if listing requirements or other applicable law require a majority-independent board.

Both Nasdaq[116] and New York Stock Exchange [117] listing standards require a majority independent board, unless a specified exception applies. The Company listed its shares on Nasdaq, so to satisfy the Conditional Floor, TA had to include a sufficient number of nominees "that qualify as 'independent' directors as defined in the [listing standards] and applicable law such that, together with any other

---

the tag-along right—leaving no gap for the implied covenant to fill."), *aff'd,* 351 A.3d 493 (Del. 2025).

[115] That is all the more true where three of the four members of the Nominating Committee (including the Chair) were TA Designees. A supermajority of the individuals making the acceptability determination for the TA Designees were themselves TA Designees.

[116] Nasdaq R. 5605(b)(1) ("A majority of the board of directors must be comprised of Independent Directors as defined in Rule 5605(a)(2).").

[117] NYSE Listed Company Manual § 303A.01 ("Listed companies must have a majority of independent directors.").

'independent' directors serving on the Board that are not [TA designees], the Board is comprised of at least a majority of 'independent' directors."[118]

As a matter of simple math, the combination of the right to nominate a majority of directors and a requirement to have a majority-independent board will always force a nominating party to nominate at least one independent director (to achieve a majority if all minority directors are independent) and possibly more (if some minority directors, like the CEO, are non-independent). Assume, for example, that the Board had nine members. For the Board to have an independent majority, there must be five independent directors. TA had the right to nominate a majority, or five, and the Company could nominate the other four. The TA Agreement required that all of the Company's nominees be independent except for the CEO and one New Mountain nominee. Subtracting those directors means the Company must nominate at least two independent directors. For the Board to have an independent majority, TA must nominate at least three independent directors. That math generalizes. If the New Mountain nominees all qualify as independent, or the CEO does not serve on the Board, then TA's required number of independent nominees goes down. But to deliver an independent majority when TA has the right to designate a majority of the nominees, TA always must nominate at least one independent director. So too for any party with a majority-nomination right that wants to satisfy a majority-independent-board requirement.

---

[118] TA Agr. § 2.1(a).

"A statute will not be construed so as to require an absured [sic] or unworkable result."[119] The Safe Harbor Statute was intended to apply to all Delaware companies, including public companies. If that constraint defeats the Discretion Requirement, then the Board-Majority Trigger becomes illusory for any publicly listed company that does not fall within an exception to the majority-independent-board requirement.

Most of the exceptions to the majority-independent-board requirement apply in atypical situations, such as asset-backed issuers and other passive issuers, recently listed companies, companies emerging from bankruptcy, companies transferring from other markets or exchanges, smaller reporting companies, and foreign private issues.[120] A broader exception exists for controlled companies, but Nasdaq defines a controlled company as an issuer where a single person, entity, or group holds more than 50% of its voting power.[121] The Stock-Majority Trigger already sweeps in those companies.

---

[119] *Nationwide Mut. Ins. Co. v. Krongold*, 318 A.2d 606, 608 (Del. 1974); *see E. I. Du Pont De Nemours & Co. v. Clark*, 88 A.2d 436, 438 (Del. 1952) ("The object of statutory construction is to give, if possible, a sensible and practical meaning to a statute as a whole so that it may be applied in future cases as well as the present one without difficulty. The court must necessarily be guided by the presumption that the Legislature did not intend an unreasonable, absurd or unworkable result.").

[120] *See* Nasdaq R. 5615; NYSE Listed Company Manual § 303A.00.

[121] Nasdaq R. 5615(a)(7)(B) ("A Controlled Company is exempt from the requirements of Rule 5605(b), (d), and (e), except for the requirements of subsection (b)(2) which pertain to executive sessions of Independent Directors."); NYSE Listed Company Manual § 303A.00 ("A listed company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another

Interpreting the Discretion Requirement so narrowly that the Conditional Floor would defeat it would render the Board-Majority Trigger a nullity for the general run of public companies. That seems unworkable.

The parties debate whether Nasdaq's definition of independence is so constraining as to render the Majority-Nomination Right inadequate to satisfy the Board-Majority Trigger. Nasdaq's definition of independence turns on relationships with the Company.[122] It does not meaningfully constrain TA's ability to nominate directors.

The TA Defendants argue that even if Nasdaq's definition is not meaningfully constraining, "applicable law" includes Delaware law. The TA Defendants contend that Delaware's definition of a disinterested director, now codified in the Safe Harbor Statute,[123] limits TA's ability to nominate individuals affiliated with TA or its investors. But Delaware law is not like a listing standard. It does not approach disinterestedness in the abstract. It analyzes disinterestedness for purposes of a specific "act or transaction."[124]

---

company is not required to comply with the requirements of Sections 303A.01, 303A.04 or 303A.05.").

[122] Nasdaq R. 5605(a)(2).

[123] *See* 8 *Del. C.* § 144(e)(4) ("'Disinterested director' means a director who is not a party to the act or transaction and does not have a material interest in the act or transaction or a material relationship with a person that has a material interest in the act or transaction.").

[124] *Id.*

The Conditional Floor requires an abstract assessment of independence, and Delaware law cannot supply the content for that type of test. Directors affiliated with TA would not be disinterested for purposes of a transaction between the Company and TA, but that does not mean they are non-disinterested for all purposes. In a transaction where TA's interests align with those of the Company and all of its stockholders, directors affiliated with TA would be disinterested.

Board compensation brings the issue home. Directors are not disinterested with respect to their own compensation, so if the possibility of not being a disinterested director under Delaware law for purposes a particular act or transaction defeated independence for purposes of the Majority-Nomination Requirement, then the only nominees who could serve would be those who agreed to serve for free. That would be unworkable.

The Discretion Requirement can accommodate the Conditional Floor. The Majority-Nomination Right does not run afoul of the Discretion Requirement because of the Conditional Floor's existence.

3. Is The Board-Majority Trigger A Dimmer Switch Or A Toggle Switch?

The TA Defendants last argue that the Board-Majority Trigger only establishes a minimum threshold for controlling stockholder status. They contend that in addition to meeting the Board-Majority Trigger, the plaintiffs must plead facts supporting an inference that TA qualifies as a controlling stockholder under common law principles. The TA Defendants thus treat the Board-Majority Trigger as working like a dimmer switch: Satisfying the Board-Majority Trigger clicks the power on, but

more is required to turn up the light to a level of brightness that confers controlling stockholder status. The plaintiffs assert that the Board-Majority Trigger is a toggle switch: Satisfying the Board-Majority Trigger switches on the light of controlling stockholder status. The plain language of the Board-Majority Trigger operates as a toggle switch. Assuming for the sake of argument that the language was ambiguous, the legislative history confirms that reading.

When determining plain meaning, a court must read a statute as a whole.[125] The Controller Definition has three separate triggers: the Stock-Majority Trigger, the Board-Majority Trigger, and the Non-Majority Trigger.

Each of the Controller Definition's triggers speaks in mandatory and straightforward terms. The three triggers are connected by an "or," indicating that the Controller Definition is satisfied if any one trigger is met. The parallel structure suggests that the three triggers operate in the same way.

The Stock-Majority Trigger is a toggle switch. It uses control of a majority of the voting power to establish controlling stockholder status. Before the Safe Harbor Statute, the ability to control a majority of the voting power likewise conferred

---

[125] *Indus. Rentals, Inc. v. New Castle Cty. Bd. of Adjustment*, 776 A.2d 528, 530 (Del. 2001) ("Statutes must be read as a whole and all the words must be given effect."); *Coleman v. State*, 729 A.2d 847, 851 (Del. 1999) ("Statutory enactments must be read as a whole and not in parts."); *Clark*, 88 A.2d at 438 ("If from the statute as a whole the object sought to be attained or the general intent underlying the statutory language can be ascertained, it will be given effect by the courts."); William N. Eskridge Jr., *Interpreting Law: A Primer on How to Read Statutes and the Constitution* 86 (2016) ("[I]n determining whether a statute has a plain meaning, the interpreter must consider the whole act, and not just one particular provision.").

controlling stockholder status.[126] It is not plausible to read the Stock-Majority Trigger as a dimmer switch that requires more than a majority of the voting power.

The Non-Majority Trigger is also a toggle switch. It contains both a brightline trigger (the One-Third Floor) and additional qualitative factors ("power functionally equivalent to" what a person who satisfied the Stock-Majority Trigger could wield, *plus* "power to exercise managerial authority over the business and affairs of the corporation"),[127] but it makes those plus factors explicit. It is not plausible to read the Non-Majority Trigger as a dimmer switch that requires more than the One-Third Floor and the explicit plus factors.

Because the Stock-Majority Trigger and the Non-Majority Trigger both function as toggle switches, the Board-Majority Trigger should as well. All three triggers operate in parallel. The Board-Majority Trigger closely resembles the Stock-Majority Trigger by establishing what looks like a single requirement for controlling stockholder status. If the drafters of the Board-Majority Trigger intended for the trigger to require more, then they would have emulated the Non-Majority Trigger and built in additional requirements expressly.

---

[126] *Historical Article*, *supra*, at 2 ("Since the nineteenth century, American law has treated a person who wields a majority of the voting power as having control."); *id.* at 7 (documenting "a broad and stable consensus that the ability to exercise a majority of the voting power equated to control and concomitant fiduciary duties"); *accord Definitional Consensus*, *supra*, at 399 ("A consensus exists that a person who can exercise a majority of a corporation's voting power possesses control.").

[127] 8 *Del. C.* § 144(e)(2)(c).

Against this plain reading, the TA Defendants argue that interpreting the Board-Majority Trigger as a toggle switch would create a more expansive definition than what the common law contemplated. They reason that the drafters of the Controller Definition sought to limit the universe of who could qualify as a controlling stockholder, not expand it.

Before the enactment of the Safe Harbor Statute, it was unclear to what degree contractual rights could give rise or contribute to control under Delaware law. Over the two decades preceding the enactment of the Safe Harbor Statute, some Delaware authorities argued against considering contract rights when analyzing control;[128] others took contractual rights into account.[129] There was also a longer history of statutory tests and judicial decisions taking contract rights into account when assessing control.[130]

---

[128] *E.g., In re KKR Fin. Hldgs. LLC S'holder Litig.*, 101 A.3d 980, 991–93 (Del. Ch. 2014), *aff'd sub nom. Corwin v. KKR Fin. Hldgs. LLC*, 125 A.3d 304 (Del. 2015); *In re Sirius XM S'holder Litig.,* 2013 WL 5411268, at *9 (Del. Ch. Sept. 27, 2013); *Superior Vision Servs., Inc. v. ReliaStar Life Ins. Co.*, 2006 WL 2521426, at *5 (Del. Ch. Aug. 25, 2006).

[129] *E.g.*, *Pattern Energy*, 2021 WL 1812674, at *41–46; *Skye Mineral Invs., LLC v. DXS Cap. (U.S.) Ltd.*, 2020 WL 881544, at *24–29 (Del. Ch. Feb. 24, 2020); *Basho Techs.,* 2018 WL 3326693, at *26; *Calesa Assocs., L.P. v. Am. Cap., Ltd.*, 2016 WL 770251, at *10–12 (Del. Ch. Feb. 29, 2016); *Williamson v. Cox Commc'ns, Inc.*, 2006 WL 1586375, at *4 (Del. Ch. June 5, 2006).

[130] *See Definitional Consensus*, *supra*, at 418–20, 435–36, 440–44, 446, 448, 452–53, 456, 463, 467 (discussing statutory regimes that are (1) intended to address issues similar to what fiduciary duties address and (2) incorporate concepts of contractual control); *Historical Article*, *supra*, at 16–19, 22, 56, 73–75, 98 (discussing authorities incorporating contract rights into control analysis).

For a party with contractual blocking rights, which approach the court took could make the difference between fiduciary and non-fiduciary status. Majority ownership does not give a controlling stockholder the power to interfere with individual board decisions.[131] A majority owner can elect directors,[132] amend bylaws,[133] and veto major transactions that require statutory votes under the DGCL, charter, bylaws, or other law,[134] but that is it. Through provisions like the Approval Requirements, a counterparty like TA obtains granular control over board decisions

---

[131] *See Hollinger Inc. v. Hollinger Int'l, Inc.*, 858 A.2d 342, 387 (Del. Ch. 2004) ("The reality is that controlling stockholders have no inalienable right to usurp the authority of boards of directors that they elect. That the majority of a company's voting power is concentrated in one stockholder does not mean that that stockholder must be given a veto over board decisions when such a veto would not also be afforded to dispersed stockholders who collectively own a majority of the votes."), *appeal refused*, 871 A.2d 1128 (Del. 2004) (TABLE); *Paramount Commc'ns Inc. v. Time Inc.*, 1989 WL 79880, at *30 (Del. Ch. July 14, 1989) (Allen, C.) ("[T]he financial vitality of the corporation and the value of the company's shares is in the hands of the directors and managers of the firm. The corporation law does not operate on the theory that directors, in exercising their powers to manage the firm, are obligated to follow the wishes of a majority of shares. In fact, directors, not shareholders, are charged with the duty to manage the firm."), *aff'd*, 571 A.2d 1140 (Del. 1990); *TW Servs., Inc. v. SWT Acq. Corp.*, 1989 WL 20290, at *8 n.14 (Del. Ch. Mar. 2, 1989) (Allen, C.) ("[A] corporation is not a New England town meeting; directors, not shareholders, have responsibilities to manage the business and affairs of the corporation, subject however to a fiduciary obligation.").

[132] *See* 8 *Del. C.* § 211(b).

[133] *See* 8 *Del. C.* § 109(a).

[134] *See, e.g.*, 8 *Del. C.* §§ 242(b), 251(c), 271(a), 275(b).

that goes beyond what a majority stockholder would possess.[135] Taking contractual blocking rights into account could therefore result in a finding of control.[136]

By enacting the Board-Majority Trigger, the Controller Definition eliminated uncertainty on those issues. The Board-Majority Trigger turns on the right to cause the election of directors; other contractual rights do not count for purposes of assessing control.

---

[135] *See Seavitt*, 321 A.3d at 535–36 ("The Stockholders Agreement contains a list of prototypical governance provisions that ordinarily would need to appear in the Charter or Bylaws. The Lead Investors simply chose to put the provisions in a contract. The resulting provisions give the Lead Investors more specific authority than any controlling stockholder could achieve solely by exercising stockholder-level voting power. . . . The Pre-Approval Rights and Board Composition Covenants enable the Lead Investors to exercise issue-by-issue control over the Board, and the Stockholders Agreement enables the Lead Investors to continue to exercise those rights as they sell down.");*Voigt v. Metcalf*, 2020 WL 614999, at *19 (Del. Ch. Feb. 10, 2020) ("The holder of a majority of the outstanding voting power could vote against transactions that required stockholder approval, but it could not exercise a stockholder level veto over actions that the board of directors could take unilaterally. To intervene on those issues, the holder of a mathematical majority of the voting power would need to act through director representatives on the board who would be clearly acting as fiduciaries when making decisions. The blocking rights in the Stockholders Agreement empowered CD&R to limit a range of board actions at the stockholder level and to do so by exercising contract rights that CD&R could argue did not implicate fiduciary duties.").

[136] *See, e.g.*, *In re Loral Space and Commc'ns Inc.*, 2008 WL 4293781, at *21 (Del. Ch. Sept. 19, 2008) (finding control post-trial where non-majority stockholder had, among other things, "substantial blocking power" over corporate governance changes and major corporate transactions); *Williamson*, 2006 WL 1586375, at *5 (drawing pleadings-stage inference of control where minority stockholders possessed contract rights that gave them "the ability to shut down the effective operation of the [company's] board of directors by vetoing board actions"); *see also In re Tesla Motors, Inc. S'holder Litig.*, 2018 WL 1560293, at *15 (Del. Ch. Mar. 28, 2018) (citing supermajority voting requirements that gave CEO blocking power over bylaw amendments as one factor leading to a pleadings-stage inference of control).

Assuming for the sake of argument that the Board-Majority Trigger was ambiguous, evidence of legislative intent forecloses a dimmer-switch reading. After the amended version of the Safe Harbor Statute was introduced, lawyers from RLF stressed the "Clarification of Controlling Stockholder Definition."[137] They explained that

> [t]he legislation specifically defines what constitutes a "controlling stockholder" – a classification now limited to persons or entities that:
>
> ● Control a majority in voting power of outstanding stock entitled to vote in director elections;
>
> ● Control the election of directors possessing a majority of the board's total voting power; and/or
>
> ● Possess the functional equivalent of majority control by having both control of at least one-third in voting power of the outstanding stock and the power to exercise managerial authority.[138]

They described the definition as bringing "invaluable clarity," stating that "[t]he new bright-line rules provide greater predictability when advising clients on governance structures and transaction approval mechanisms."[139] They envisioned a toggle switch, not a dimmer switch.

---

[137] *Corporate Law Advantage*, *supra*.

[138] *Id.*

[139] *Id.*

After the Safe Harbor Statute was enacted, RLF issued memoranda making similar points.[140] Wilson Sonsini authored a memorandum that described the proposed Safe Harbor Statute as a source of "stability" and "predictability" that would correct case law that "established a number of principles that can be problematic for companies with founders and other significant stockholders."[141] Among them were decisions that "have assigned controlling stockholder status at relatively low levels of stock ownership (including 15-25 percent of voting power) based on a number of factors, such as influence over the company and board, *the use of contractual veto rights*, and relationships to board members."[142] Those materials contemplated a Controller Definition that would provide bright-line clarity.

As a matter of plain language and based on evidence of legislative intent, the three triggers in the Controller Definition are toggle switches. A person who meets one of the triggers is a controlling stockholder. A person who does not meet one of the

---

[140] RLF, *Delaware Enacts*, *supra* (explaining that the new statute "establishes specific parameters for identifying 'controlling stockholders' and limits this classification to only those that (i) control a majority in voting power of the outstanding stock entitled to vote generally in the election of directors, (ii) control the election of directors possessing a majority of the board's total voting power, or (iii) possess the functional equivalent of majority control by having both control of at least one-third in voting power of the outstanding stock entitled to vote generally in the election of directors and the power to exercise managerial authority"); RLF, *Overview of Safe Harbors*, *supra* (discussing the new statute's definitions, including the Controller Definition, and stressing that "[o]ne of the principal goals of the new legislation was to provide clarity and predictability in the law, including by codifying concepts that are core to any review of fiduciary conduct").

[141] Wilson Sonsini, *Landmark Legislation*, *supra*.

[142] *Id.* (emphasis added).

triggers is not a controlling stockholder, unless a specific statute calls for a different definition.[143]

The Board-Majority Trigger is a toggle switch, not a dimmer switch. This decision therefore need not consider whether the plaintiffs have pled a sufficient basis to infer that TA was a common law controlling stockholder. Satisfying the Board-Majority Trigger is enough.

III. CONCLUSION

The complaint supports a reasonable inference that TA was the Company's controlling stockholder under the Controller Definition in the Safe Harbor Statute. The TA Defendants did not move to dismiss Count I of the Complaint on any other ground. The claim against them can now proceed past the pleading stage.

---

[143] *E.g.*, 8 *Del. C.* § 203(c)(4) (defining "control" for purposes of that section).