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Case Number 603,2016

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHESTER COUNTY RETIREMENT SYSTEM, INDIVIDUALLY, and on behalf of all those similarly situated, Plaintiff-Below, Appellant, v. JOSHUA L. COLLINS, DAVID A. WILLMOTT, ROBERT E. BEASLEY, JR., RONALD CAMI, ANDREW C. CLARKE, NELDA J. CONNORS, E. DANIEL JAMES, HAROLD E. LAYMAN, MAX L. LUKENS, DANIEL J. OBRINGER, BLOUNT INTERNATIONAL, AMERICAN SECURITIES LLC, P2 CAPITAL PARTNERS, LLC, P2 CAPITAL MASTER FUND I, L.P., ASP BLADE INTERMEDIATE HOLDINGS, INC., ASP BLADE MERGER SUB, INC. and GOLDMAN, SACHS & CO., Defendants-Below, Appellees.	No. 603, 2016 Court Below: Court of Chancery of the State of Delaware C.A. No. 12072-VCL

APPELLEE GOLDMAN, SACHS & CO.'S
CORRECTED ANSWERING BRIEF

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NATURE OF PROCEEDINGS

This appeal arises from the dismissal of Plaintiff's post-closing damages action challenging the acquisition of Blount International, Inc. ("Blount") by American Securities LLC ("American Securities") and P2 Capital Partners, LLC ("P2" and, together with American Securities, the "Buyer Parties") at $10 per share, an 86% premium to the then-prevailing stock price (the "Transaction"). Goldman, Sachs & Co. ("Goldman Sachs") served as one of Blount's financial advisors in connection with the Transaction. After Blount supplemented the disclosures in its Proxy[1] to moot putative disclosure claims asserted by one of its stockholders, Blount's fully informed, independent stockholders overwhelmingly approved the Transaction. The Court of Chancery held that this stockholder approval triggered the application of the business judgment rule under *Corwin* v. *KKR Financial Holdings LLC*, 125 A.3d 304 (Del. 2015), and thus required dismissal of Plaintiff's claim for breach of fiduciary duty against the director defendants as well as its claim of aiding and abetting against Goldman Sachs predicated on the alleged fiduciary breach.

Goldman Sachs fully joins in the answering brief filed on behalf of the special committee of the board of directors of Blount that approved the Transaction

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[1] References to the "Proxy" refer to Blount's Amended Proxy Statement, dated March 9, 2016.

(the "Special Committee"), and incorporates its arguments by reference.[2] This answering brief addresses only arguments specific to Goldman Sachs, including Plaintiff's challenge to the Court of Chancery's manifestly correct holding that Goldman Sachs' role in the transaction and its prior relationships with the Buyer Parties were "sufficiently disclosed" in the Proxy, and that providing yet more historical detail about Goldman Sachs' relationship with the Buyer Parties would not have altered the "total mix of information" available to Blount's stockholders.

Further, although not reached by the Court of Chancery in dismissing Plaintiff's claims, Plaintiff's failure to plead the necessary aiding and abetting elements of knowing participation and proximate causation provides alternate grounds for affirming the dismissal of the claim against Goldman Sachs. As detailed below, Plaintiff did not plead those elements because (i) Goldman Sachs did nothing more than render customary financial services pursuant to a fee structure that aligned its interests with Blount's stockholders, which cannot constitute aiding and abetting; (ii) Goldman Sachs had only one client in the Transaction, Blount, to which it provided all material disclosures; (iii) Goldman Sachs' relationships with the Buyer Parties, as the disclosures confirm, were wholly unrelated to the Transaction; (iv) Goldman Sachs was joined by a co-

[2] References to the "Special Committee's Answering Brief" or "SC Br." refer to the Blount Defendants-Appellees' Answering Brief on appeal filed contemporaneously herewith.

advisor, Greenhill, that separately opined on the fairness of the Transaction; and (v) a robust go-shop process, which included the solicitation of 91 potentially interested parties, yielded no additional interest in Blount.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly held that the fully informed, uncoerced approval of the Transaction by a majority of Blount's outstanding, disinterested shares required application of the business judgment rule, extinguishing Plaintiff's fiduciary duty claim against the directors, and in turn, Plaintiff's aiding and abetting claim against Goldman Sachs predicated on the directors' alleged breach of duty. As to the alleged disclosure deficiencies concerning Goldman Sachs, conceived by Plaintiff after Blount amended the Proxy to address the original alleged deficiencies, the Court of Chancery properly held that such disclosures would have been immaterial to stockholders, and, as such, did not alter the "total mix of information" on which Blount's stockholders based their votes in approving the Transaction. (These and the other alleged disclosure deficiencies are addressed by the Blount parties.) The Court of Chancery applied the proper materiality standard and correctly invoked the business judgment rule under *Corwin*. Plaintiff's argument that management involvement in a leveraged buyout altered the materiality standard is contrary to this Court's precedents.

2. Nothing to admit or deny. Additionally, Plaintiff has not met its "high burden" of pleading the elements of aiding and abetting, including in particular, knowing participation by Goldman Sachs, or that any action by Goldman Sachs proximately caused Plaintiff's alleged injuries. As to scienter, all allegations of

malfeasance concern unilateral actions by certain members of the Special Committee—not Goldman Sachs—and Plaintiff does not claim that Goldman Sachs created an "information gap." Moreover, Plaintiff's contention that Goldman Sachs unreasonably relied on lowered management financial projections fails to show scienter because Goldman Sachs specifically disclosed to the Board (and consequently, to Blount stockholders) that it was relying on those projections, and, in any event, Plaintiff never explains why doing so was unreasonable given Blount's declining financial performance. Likewise, given Blount's engagement of a second financial advisor, an extensive go-shop process resulting in no additional offers, an 86% premium, and overwhelming stockholder approval, Plaintiff has failed to plead that anything Goldman Sachs did caused the directors to breach their fiduciary duties.

COUNTERSTATEMENT OF FACTS

To avoid duplication, with respect to the background of this action and the facts concerning the Special Committee, Goldman Sachs adopts the Special Committee's Statement of Facts. (SC Br. at 5−21.) To the extent that Plaintiff specifically complains that the Proxy was materially incomplete as to Goldman Sachs' relationship with Blount and the Buyer Parties, for the Court's convenience, set forth below are the actual Proxy disclosures (never recited by Plaintiff) which show just the opposite.

- "[p]ursuant to a letter agreement dated May 21, 2008, the Company engaged Goldman Sachs to act as its financial advisor in connection with the possible sale of all or a portion of the Company" (A206);
- "[p]ursuant to the terms of [that] letter, the Company has agreed to pay Goldman Sachs a transaction fee that is estimated, based on the information available as of the date of announcement, as approximately $8 million . . ., approximately $2.6 million . . . of which became payable upon the execution of the merger agreement and the remainder of which is payable upon consummation of the transaction" (*id.*);
- "Goldman Sachs also has provided certain financial advisory and/or underwriting services to American Securities and/or its affiliates and portfolio companies from time to time for which the Investment Banking

Division of Goldman Sachs has received, and may receive compensation" (A205);

- "[d]uring the two-year period ended December 9, 2015, the Investment Banking Division of Goldman Sachs has received compensation for financial advisory and/or underwriting services provided directly to American Securities and/or to its affiliates and portfolio companies (which may include companies that are not controlled by American Securities LLC) of approximately $33.5 million" (A205–A206);
- a list of transactions and their corresponding values for which Goldman Sachs received fees from American Securities (A205);
- "Goldman Sachs also has provided certain financial advisory and/or underwriting services to P2 and/or its affiliates and portfolio companies from time to time for which the Investment Banking Division of Goldman Sachs has received, and may receive, compensation" (*id.*);
- "[d]uring the two-year period ended December 9, 2015, the Investment Banking Division of Goldman Sachs has received compensation for financial advisory and/or underwriting services provided directly to P2 and/or to its affiliates and portfolio companies (which may include

companies that are not controlled by P2 Capital Partners, LLC) of approximately $11.5 million" (A206);

- a list of transactions and their corresponding values for which Goldman Sachs received fees from P2 (A205); and
- Interline Brands, Inc. ("Interline"), a company completely unrelated to Blount, was an "affiliate at such time [of the Buyer Parties' offer to buy Blount] of P2 and funds affiliated with Goldman Sachs" (*id*.).

ARGUMENT

I. THE COURT OF CHANCERY PROPERLY DISMISSED PLAINTIFF'S AIDING AND ABETTING CLAIM AGAINST GOLDMAN SACHS FOR FAILURE TO PLEAD ADEQUATELY AN UNDERLYING BREACH OF FIDUCIARY DUTY.

A. Question Presented

Whether the Court of Chancery properly applied *Corwin* in dismissing Plaintiff's July 15, 2016 Verified Amended Class Action Complaint ("Amended Complaint" or "Compl."), asserting (i) breach of fiduciary duty claims against the director defendants, and (ii) aiding and abetting claims against Goldman Sachs following the fully informed, uncoerced approval of Blount's disinterested stockholders. (B024–B038; B055–B062.)

B. Scope of Review

This Court reviews *de novo* the Court of Chancery's decision to grant a motion to dismiss a complaint under Rule 12(b)(6). *See, e.g.*, *Cent. Mortg. Co.* v. *Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 535 (Del. 2011). Although this Court must accept Plaintiff's well-pleaded allegations as true, *see Wood* v. *Baum*, 953 A.2d 136, 140 (Del. 2008), it need not "accept as true conclusory allegations 'without specific supporting factual allegations' . . . [nor] 'every strained interpretation of the allegations proposed by the plaintiff.'" *In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 168 (Del. 2006) (footnotes omitted). In addition, this Court may consider documents that are integral to

Plaintiff's claims and incorporated by reference into the Amended Complaint, *see In re Santa Fe Pac. Corp. S'holder Litig.*, 669 A.2d 59, 69−70 (Del. 1995), and factual allegations contradicted by the clear language of the documents incorporated by reference into the Amended Complaint need not be accepted as true, *see, e.g.*, *Werner* v. *Miller Tech. Mgmt., L.P.*, 831 A.2d 318, 327 (Del. Ch. 2003); *In re Morton's Rest. Grp., Inc. S'holders Litig.*, 74 A.3d 656, 659 nn.3−4 (Del. Ch. 2013).

C. Merits of the Argument

On appeal, Plaintiff challenges the Court of Chancery's well-reasoned holding that the Proxy adequately disclosed to Blount stockholders all information material to their decision to vote on the Transaction, and thus that Defendants were entitled to invoke the cleansing effect of majority stockholder approval under *Corwin*.[3] For the reasons laid out in the Special Committee's Answering Brief (SC Br. at 22−41), as well as the additional arguments below, this Court should affirm the Court of Chancery's decision.

Specifically, as to Goldman Sachs, the Proxy disclosed extensive detail about Goldman Sachs' role in the Transaction, its relationship with Blount,

[3] References to "Appellant's Opening Brief" or "AOB" refer to the opening brief on appeal filed on behalf of Plaintiff-Appellant on February 13, 2017.

and its relationship with the Buyer Parties.[4] *See supra* at 6–8. In light of these disclosures, the Court of Chancery understandably had little difficulty in holding that the Proxy adequately informed Blount stockholders of all material facts regarding Goldman Sachs and that tangential details of a retention stretching back almost a decade were immaterial:

> The Proxy disclosed the material terms of Goldman's engagement and revealed that Goldman had a longstanding and thick relationship with the Buyers. The terms of Goldman's retention in 2008 were not material. The terms of Goldman's engagement for the transaction were material and sufficiently disclosed. Additional disclosure would not have changed the total mix of information.

(Ex. A to AOB ¶ 7.)

Attempting to find a disclosure deficiency sufficient to circumvent *Corwin*, Plaintiff contends that the Proxy was materially incomplete because it purportedly (i) did not disclose the compensation Goldman Sachs received from the Buyer Parties for investment banking services outside the customary two-year lookback period, and (ii) misstated Goldman Sachs' relationship with P2 concerning a company, Interline, that had nothing to do with Blount. (AOB at 34−37.) Neither contention has merit.

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[4] Although discussed in the background section of its brief, Plaintiff has not raised any argument concerning the disclosures regarding Goldman Sachs' engagement for the Transaction, and Goldman Sachs therefore assumes all such arguments have been abandoned.

First, Plaintiff does not dispute that the Proxy disclosed that Goldman Sachs had acted as investment banker for the Buyer Parties "from time-to-time" and specified the total compensation Goldman Sachs received from the Buyer Parties for investment banking services in the two years preceding the Blount Transaction (as well as the description of each of the matters resulting in such compensation) (*see supra* at 7−8). Instead, Plaintiff asserts that the Proxy's two-year look-back period for disclosing the specific fees Goldman Sachs received from the Buyer Parties was "arbitrary" (AOB at 37), urging that this Court find that the Proxy should have disclosed the fees Goldman Sachs received from the Buyer Parties since 2008, *i.e.*, "during Goldman's coextensive, almost eight year representation of Blount to sell the Company." (AOB at 36−37.) But a two-year look-back period for such disclosures is common in merger proxy statements, and Delaware courts have repeatedly held that disclosure of a financial advisor's fees from acquiring parties for the prior two years provides stockholders with sufficient information to understand and evaluate any potential conflicts that an advisor may have. *See In re OM Grp., Inc. S'holders Litig.*, 2016 WL 5929951, at *16−17 (Del. Ch. Oct. 12, 2016) (disclosure of fees the financial advisor received from the buyer for previous two years was sufficient); *In re Micromet, Inc. S'holders Litig.*, 2012 WL 681785, at *12 (Del. Ch. Feb. 29, 2012) (same).

Rather than addressing these precedents, Plaintiff relies entirely on generalized statements in Delaware case law about the importance of disclosing banker conflicts.[5] Critically, however, Plaintiff makes no effort to explain *why* the Proxy should have disclosed more information than that which Delaware courts previously have found sufficient, or *why* additional historical information about Goldman Sachs' fees or engagements with the Buyer Parties would suggest anything other than what the Proxy's disclosure already did: that, as the Chancery Court concluded, Goldman Sachs and the Buyer Parties had a "longstanding and thick" relationship. (Ex. A to AOB ¶ 7.) The supplemental disclosure of historical fees urged by Plaintiff would merely "bury the shareholders in an avalanche of trivial information" that would be "hardly conducive to informed decisionmaking." *Dent* v. *Ramtron Int'l Corp.*, 2014 WL 2931180, *16 n.65 (Del. Ch. June 30, 2014) (citation omitted).

Second, Plaintiff claims that the Proxy was materially misleading about the "true nature" of Goldman Sachs' relationship with P2 because the Proxy disclosed that Interline "was an affiliate at such time [i.e., the time of the offer to

[5] Plaintiff states, for example, that it is "well-established" that the Court requires "full disclosure of investment banker compensation and potential conflicts," and that investment bankers often "provid[e] services for long-standing clients or relationships" and thus "may be influenced [] to avoid irritating management and other corporate actors who stand to benefit from the transaction." (AOB at 35−36 (emphasis removed).)

acquire Blount] of P2 and funds affiliated with Goldman Sachs" instead of stating that Goldman Sachs was a co-owner of Interline with P2. (AOB at 36.) This is nonsense. Interline indisputably was co-owned by P2 and by investment funds which are (i) majority-owned by public investors unaffiliated with Goldman Sachs and (ii) managed by a separate Goldman Sachs division from the one involved in the Transaction.[6] Plaintiff never explains why a disclosure (which would have been manifestly incorrect) that Interline was partially owned by Goldman Sachs (as opposed to affiliated investment funds) would have been material to Blount stockholders. And, contrary to the impression left in Appellant's Opening Brief (AOB at 37), the Proxy explicitly disclosed Goldman Sachs' role as a financial advisor to Interline in connection with its sale. (A080−A081.)

Tacitly conceding that the Proxy's disclosure about Goldman Sachs was materially complete under established Delaware case law, Plaintiff urges this Court to adopt and apply an unprecedented, higher, and undefined disclosure standard for management-involved leveraged buyout transactions. (AOB at 27−29.) But as laid out in the Special Committee's Answering Brief (*see* SC Br. at 27−29), and as made crystal clear by this Court's precedent, management's

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[6] *See* GS Capital Partners VI Fund, L.P and P2 Capital Partners, LLC Complete Acquisition of Interline Brands, Inc., THESTREET.COM, https://www.thestreet.com/story/11690625/1/gs-capital-partners-vi-fund-lp-and-p2-capital-partners-llc-complete-acquisition-of-interline-brands-inc.html.

involvement in a leveraged buyout *does not alter* the standard for demonstrating materiality of an allegedly omitted fact. As this Court explained in *Barkan* v. *Amsted Industries, Inc.*, there is no "stricter test" for materiality based on management involvement in a buyout; the "danger of omissions and misrepresentations" will not "render [an] omission material" if the omission was immaterial, even if the omission was "made by a party with some incentive to be less than candid." 567 A.2d 1279, 1288−89 (Del. 1989). This remains true even if "competing bidders are not present to keep management honest." *Id.* at 1288. Thus, even in a transaction with management involvement, the standard remains whether an omitted fact "significantly altered the 'total mix' of information made available" to investors. *Rosenblatt* v. *Getty Oil Co.*, 493 A.2d 929, 944 (Del. 1985); *see also In re Solera Holdings, Inc. S'holder Litig.*, 2017 WL 57839, at *9 (Del. Ch. Jan. 5, 2017) ("'troubling facts regarding director behavior' [do not create] a new standard for stockholder disclosure," but rather, and "consistent with existing precedent," only information "'that would have been material to a voting stockholder' must be disclosed" (quoting *Corwin*, 125 A.3d at 312) (emphasis removed)).[7] In any event, the Court of Chancery explicitly recognized the

[7] Despite its clear applicability, Plaintiff never addresses the relevant holding in *Barkan*, let alone demonstrates the "urgent reasons" and "clear manifestation of error" that would be necessary to justify abandoning an established precedent of this Court. *Account* v. *Hilton Hotels Corp.*, 780 A.2d 245, 248 (Del. 2001).

participation of certain members of Blount management in the post-merger entity and was appropriately mindful of this fact in evaluating Plaintiff's disclosure claims. (*See* Ex. A. to AOB ¶¶ E, 6−9.)

None of the decisions Plaintiff cites require more disclosure concerning Goldman Sachs than that provided in the Proxy. To the contrary, Plaintiff's authorities only confirm the adequacy of the disclosures here. *In re Atheros Communications, Inc. Shareholder Litigation* (AOB at 35) involved the omission of the percentage of the financial advisor's compensation that was contingent on consummation of the merger. Indeed, the *Atheros* court declined to decide whether it was even necessary to quantify the total amount of the financial advisor's fee other than to describe it as "customary." 2011 WL 864928, at *9 (Del. Ch. Mar. 4, 2011). Here, of course, the Proxy disclosed the total amount of Goldman Sachs' fees, including the method of calculating their contingent component. (*See supra* at 6.)

Likewise, the "partial disclosure" at issue in *In re Rural Metro Corp. Shareholders Litigation* (AOB at 35, 36) had nothing to do with the amount or extent of the financial advisor's compensation, but rather the financial advisor's failure to disclose to the company (and, by extension, the company's stockholders) that it was secretly trying to provide buy-side financing and to parlay its work as a sell-side advisor into a buy-side financing role in a related transaction. 88 A.3d 54,

105−106 (Del. Ch. 2014). The claims in this action bear no relationship to those in *Rural Metro*: there is no allegation here that Goldman Sachs sought any role with the Buyer Parties in connection with the acquisition of Blount (indeed, Goldman Sachs had advised Blount that it would not seek to do so (A087, A173)), nor that Goldman Sachs withheld information from Blount or its stockholders in order to pursue its own ends.

Finally, Plaintiff inexplicably cites *David P. Simonetti Rollover IRA* v. *Margolis* (AOB at 36), a case in which the court *rejected* similar claims attacking disclosures regarding the extent of the relationship between a target company's financial advisor and the buyer and the buyer's financial advisor and the target company. 2008 WL 5048692, at *6−7 (Del. Ch. June 27, 2008). The portion of *Simonetti* that Plaintiff misleadingly cites concerned a dispute over disclosure of the value of warrants held by the financial advisor to buy common stock and convertible notes in the post-merger company. (*Id.* at *14; AOB at 36.) No such facts exist here.

In sum, Plaintiff has offered no basis for this Court to diverge from the Court of Chancery's findings that the disclosures in the Proxy related to Goldman Sachs were sufficient. Nor has Plaintiff provided any justification to overturn decades of this Court's precedent in order to impose an ill-defined, heightened standard for management-involved buyouts that serves no legal or

policy objective, but only function as a *deus ex machina* for Plaintiff's inadequate claims.

II. ALTERNATIVELY, THIS COURT CAN AFFIRM DISMISSAL OF THE AIDING AND ABETTING CLAIM BECAUSE PLAINTIFF HAS NOT DEMONSTRATED KNOWING PARTICIPATION OR PROXIMATE CAUSE.

A. Question Presented

Whether alternate and independent bases exist to affirm the Court of Chancery's dismissal of the aiding and abetting claim against Goldman Sachs. (B038–B044; B062–B078.)

B. Scope of Review

On appeal, this Court "may affirm on the basis of a different rationale than that which was articulated by the trial court . . . and may rule on an issue fairly presented to the trial court, even if it was not addressed by the trial court." *Unitrin, Inc.* v. *Am. Gen. Corp.*, 651 A.2d 1361, 1390 (Del. 1995); *see also RBC Capital Mkts., LLC* v. *Jervis*, 129 A.3d 816, 849 (Del. 2015) (same); *Pierre-Louis* v. *Bank of Am., N.A.*, 128 A.3d 993 (Del. 2015) (affirming dismissal of complaint on alternative procedural grounds); *Rossdeutscher* v. *Viacom, Inc.*, 768 A.2d 8, 9, 23−24 (Del. 2001) (affirming dismissal of complaint in part on the merits where the lower court had done so "solely on the federal statute of limitations ground without reaching the other grounds for dismissal that had been asserted"). Here, although the Court of Chancery's dismissal under *Corwin* obviated its need to

address other aspects of an aiding and abetting claim, Goldman Sachs presented (and Plaintiff responded to) two additional, equally sufficient bases for dismissal.

C. Merits of the Argument

To state a claim for aiding and abetting a breach of fiduciary duty, a plaintiff must demonstrate "(i) the existence of a fiduciary relationship, (ii) a breach of the fiduciary's duty, (iii) knowing participation in that breach by the defendants, and (iv) damages proximately caused by the breach." *RBC Capital*, 129 A.3d at 861. The Court of Chancery dismissed the aiding and abetting claim against Goldman Sachs solely based on the failure of Plaintiff to plead an underlying breach of fiduciary duty. (Ex. A. to AOB ¶ 11.) Nevertheless, even if this Court reversed the Court of Chancery's application of *Corwin*, Goldman Sachs still should be dismissed from the action because Plaintiff has failed to plead knowing participation or proximate causation, each of which is an essential element of its aiding and abetting claim.

First, the allegations in the Amended Complaint did not meet Plaintiff's "high burden," *In re Volcano Corp. S'holder Litig.*, 143 A.3d 727, 750 (Del. Ch. 2016) (citing *Singh* v. *Attenborough*, 137 A.3d 151, 152 (Del. 2016)), *aff'd*, 2017 WL 563187 (Table) (Del. Feb. 9, 2017), of showing that Goldman Sachs "knowingly, intentionally, or with reckless indifference" participated in the

alleged breach of fiduciary duty, *RBC Capital*, 129 A.3d at 862 (citation omitted).[8] As discussed in Goldman Sachs' motion to dismiss briefs before the Court of Chancery, Plaintiff's allegations come nowhere close to this standard. (B028−B036; B062−B075.)

Crucially, Plaintiff makes no allegations in the Amended Complaint that Goldman Sachs hid information from any of the directors (such as the undisclosed attempts to provide financing for the merger in *RBC Capital*),[9] received a *quid pro quo* for future business, or pressured Blount to sell itself for below fair value. Rather, Plaintiff—without pleading any actual supporting facts—speculated that, because of Goldman Sachs' longstanding relationships with Blount and the Buyer Parties, Goldman Sachs enabled or turned a blind eye to

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[8] This Court has recognized that "Delaware has provided advisors with a high degree of insulation from liability by employing a defendant-friendly standard that requires plaintiffs to prove scienter and awards advisors an effective immunity from due-care liability." *Singh*, 137 A.3d at 152-53; *see also RBC Capital*, 129 A.3d at 865−66 & n.192 (collecting authorities confirming that aiding and abetting claims are "among the most difficult to prove").

[9] Unlike the financial advisor in *RBC*, Goldman Sachs determined it would *not* seek any buy-side role, and this was disclosed in the Proxy. (A173.) Plaintiff faults Goldman Sachs for providing access to its separate leveraged finance professionals to discuss with American Securities and P2 (at those parties' request) the state of the leveraged finance markets in October 2015. (*See* A087.) But the Special Committee expressly allowed this single conversation early in the process, knowing that Goldman Sachs had affirmed it would not provide any financing to the Buyer Parties, and that the Goldman Sachs representatives involved in this consultation were not the ones advising the Company. (A173.)

alleged improprieties by Blount's management by relying on management's financial projections. (*E.g.*, A120−A121.) But Goldman Sachs' reliance on management projections was proper, in accordance with Goldman Sachs' engagement letter, and was disclosed to Blount's stockholders. *See RBC Capital*, 129 A.3d at 865 n.191 (financial advisors are not "gatekeepers" to the board and the financial advisor's responsibilities are cabined by the engagement letter); *see also In re Best Lock Corp. S'holder Litig.*, 845 A.2d 1057, 1073 (Del. Ch. 2001) (information statement properly disclosed financial advisor's reliance on management projections). Moreover, Plaintiff never explained how or why Goldman Sachs' reliance on management's declining financial projections was improper given Plaintiff's own concession that Blount "struggled in the then-current global economic conditions." (A062.)

Second, Plaintiff has not adequately pleaded that *any* purported action by Goldman Sachs "caused the [sale] process to unfold differently than it otherwise would have." *Rural Metro*, 88 A.3d at 101. The Buyer Parties initiated contact with the Company, the Board decided to proceed with discussions and the Board subsequently structured and directed every aspect of the process. Blount stockholders had all material information when voting on the Transaction, which resulted in an 86% premium to the then-prevailing stock price and was overwhelmingly approved by a stockholder vote following an extensive go-shop

period during which 91 parties were consulted (and 13 entered into confidentiality agreements). Plaintiff never identifies any errors in Goldman Sachs' financial analysis, and a separate respected financial advisor independently concluded the transaction was fair to Blount stockholders from a financial point of view. (A175, A179−A182.) In the face of these incontrovertible facts, Plaintiff did not even try to argue below that Goldman Sachs' actions were a proximate cause of any breach (B076−B078), and the Court of Chancery's decision may be affirmed on this independent basis. *See RBC Capital*, 129 A.3d at 864 (aiding and abetting defendant's actions must be proximate cause of harm to stockholders to be actionable).

Stripped of Plaintiff's ineffective attempts to insinuate scienter, Plaintiff's allegations reveal nothing more than an investment banker providing customary financial services—communicating with potential Buyers at the Special Committee's direction, performing a fairness analysis and conducting a market check at the Special Committee's direction. These allegations, accordingly, fall within the well-settled precedent declining to transform routine professional services into aiding and abetting liability. *See Lee* v. *Pincus*, 2014 WL 6066108, at *14 (Del. Ch. Nov. 14, 2014) ("[I]t is not reasonable to infer here that, simply by . . . acting as underwriters in the secondary offering, the Underwriter Defendants 'participated in the [] board's decisions, conspired with [the] board, or otherwise

caused the board to make the decisions at issue.'") (quoting *Malpiede* v. *Towson*, 780 A.2d 1075, 1098 (Del. 2001)); *Zazzali* v. *Hirschler Fleischer, P.C.*, 482 B.R. 495, 515, 519 (D. Del. 2012) (allegations that defendants aided and abetted a breach by providing professional services that "were common in the industry" and receiving a "customary fee" were insufficient); *Trenwick Am. Litig. Tr.* v. *Ernst & Young, L.L.P.*, 906 A.2d 168, 215 (Del. Ch. 2006) (dismissing aiding and abetting claim where "plaintiff cannot articulate what it is that the advisors did that was intentionally wrongful"); *see also RBC Capital*, 129 A.3d at 865 n.191 (refusing to adopt Court of Chancery's description of "gatekeeper[]" role of financial advisor in M&A transactions).

Given Plaintiff's failure to demonstrate either knowing participation or proximate causation as a matter of law, both of which are necessary elements of an aiding and abetting claim, this Court should affirm the dismissal of Goldman Sachs on these alternate grounds even if Plaintiff's underlying fiduciary duty claims are reinstated.

CONCLUSION

For the foregoing reasons, Goldman Sachs respectfully requests that the Court affirm the Court of Chancery's dismissal of Plaintiff's claim against Goldman Sachs with prejudice and without leave to amend.

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