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IN THE SUPREME COURT OF THE STATE OF DELAWARE

BILL LE CLAIR and JOSEPH POSPISIL, on behalf of themselves and all other similarly situated former stockholders of KNOWBE4, INC., Plaintiffs-Below, Appellants, v. KNOWBE4, INC., SJOERD SJOUWERMAN, JEREMIAH DALY, STEPHEN SHANLEY, KEVIN KLAUSMEYER, SHRIKRISHNA VENKATARAMAN, GERHARD WATZINGER, KARA WILSON, KKR & CO. INC., KKR KNOWLEDGE INVESTORS L.P., ELEPHANT PARTNERS, ELEPHANT PARTNERS I, L.P., ELEPHANT PARTNERS II, L.P., ELEPHANT PARTNERS 2019 SPV-A, L.P., and ELEPHANT PARTNERS II-B, L.P., Defendants-Below, Appellees.	No. 260, 2026 Court Below: Court of Chancery of the State of Delaware, C.A. No. 2024-1143-KSJM **Public Version filed on August 25, 2026**

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TABLE OF CONTENTS

Page

TABLE OF CITATIONS iii

NATURE OF PROCEEDINGS 1

SUMMARY OF ARGUMENT 5

STATEMENT OF FACTS 6

A. Parties 6

B. Sjouwerman Founds KnowBe4; Elephant and KKR Become Anchor Investors 7

C. Vista Explores Acquisition, then Purchases Rollover Group Shares Ahead of KnowBe4's IPO 7

D. Vista Plans Take-Private with the Rollover Group, which Presents the Merger and Their Rollover to the Board 8

E. The Board Establishes the Committee and Implements *MFW*'s Dual Protections 10

F. The Committee Perpetuates Vista's Advantage, and Works with the Rollover Group Toward the Merger 12

G. The Committee Reveals Its Pricing Views to Vista and the Rollover Group Before Receiving Any Merger Proposals 14

H. Vista Coordinates the Rollover Group's Rollovers Before Submitting Its Bid 15

I. Vista Submits Its Underpriced Bid 16

J. The Committee Accepts the Inadequate Merger Price 17

K. The Rollover Group Down-Converts Their Class B Shares to Preordain the Stockholder Vote; KKR Essentially Doubles its Rollover; the Board Approves the Merger 18

L. KnowBe4 Issues the Materially Deficient Proxy; the Merger Closes 19

ARGUMENT 20

I. DEFENDANTS HAVE NOT MET THEIR BURDEN TO ESTABLISH ENTITLEMENT TO VOTE-BASED JUDICIAL CLEANSING 20

A. Question Presented 20
B. Scope of Review 20
C. Merits of Argument 20
1. The Proxy Omitted the Committee Members' Conflicts 21
2. The Proxy Repeatedly Described Morgan Stanley as "Independent," Yet Omitted Its Potential and Actual Conflicts 33
3. The Proxy Omitted KKR's Dramatic Rollover Increase Upon Learning the Merger Price Would Be Unexpectedly Low 38
II. ELEPHANT, KKR AND SJOUWERMAN CONSTITUTED A CONTROL GROUP 45
A. Question Presented 45
B. Scope of Review 45
C. Merits of Argument 45
CONCLUSION 53

EXHIBITS

Exhibit A: Memorandum Opinion, dated May 27, 2026 ("Op.").

Exhibit B: Transcript of Oral Argument on Defendants' Motions to Dismiss, dated January 12, 2026.

TABLE OF CITATIONS

Cases **Page(s)**

Allen v. Encore Energy P'rs, *L.P.*,
72 A.3d 93 (Del. 2013) 28

Allen v. Harvey,
2023 WL 7122641 (Del. Ch. Oct. 30, 2023) 22

Anchorage Police & Fire Ret. Sys. v. Adolf,
2025 WL 1000153 (Del. Ch. Apr. 3, 2025).....26, 42, 43, 48

Appel v. Berkman,
180 A.3d 1055 (Del. 2018) 1, 21, 24

Arnold v. Soc'y for Savs. Bancorp, Inc.,
650 A.2d 1270 (Del 1994) 35, 39

Atallah v. Malone,
2023 WL 4628774 (Del. Ch. July 19, 2023) 31

Beam v. Stewart,
845 A.2d 1040 (Del. 2004) 33

Berteau v. Glazek,
2021 WL 2711678 (Del. Ch. June 30, 2021).....46

City of Dearborn Police and Fire Revised Ret. Sys. v. Brookfield Asset Mgmt. Inc.,
314 A.3d 1108 (Del. 2024) .....*passim*

City of Hialeah Emps. Ret. Sys. ex rel. of nCino, Inc. v. Insight Vent. P'rs, LLC,
2023 WL 8948218 (Del. Ch. Dec. 28, 2023).....31

City of Sarasota Firefighters' Pension Fund v. Inovalon Hldgs., Inc.,
319 A.3d 271 (Del. 2024) .....*passim*

City of Sarasota Firefighters' Pension Fund v. Inovalon Hldgs., Inc.,
C.A. No. 2022-0698-KSJM (Del. Ch. July 31, 2023)
(TRANSCRIPT) 42, 43

Crimson Expl. Inc. S'holder Litig.,
2014 WL 5449419 (Del. Ch. Oct. 24, 2014) 46

In re Del Monte Foods Co. S'holders Litig.,
25 A.3d 813 (Del. Ch. 2011) 34

DiRienzo v. Lichtenstein,
2013 WL 5503034 (Del. Ch. Sep. 30, 2013).....32

Eisenberg v. Chi. Milwaukee Corp.,
537 A.2d 1051 (Del. Ch. 1987) 22, 40

EMAK Worldwide, Inc. v. Kurz,
50 A.3d 429 (Del. 2012) 1

In re EngageSmart, Inc. S'holder Litig.,
354 A.3d 796 (Del. Ch. 2026) 34, 35

Franchi v. Firestone,
2021 WL 5991886 (Del. Ch. May 10, 2021).....32

Frank v. Elgamal,
2012 WL 1096090 (Del. Ch. Mar. 30, 2012) 46, 47, 51

Garfield v. BlackRock Mortg. Ventures, LLC,
2019 WL 7168004 (Del. Ch. Dec. 20, 2019).....46, 51, 52

Gilmartin v. Adobe Res. Corp.,
1992 WL 71510 (Del. Ch. Apr. 6, 1992).....39, 40

In re Hansen Med., Inc. S'holder Litig.,
2018 WL 3025525 (Del. Ch. June 18, 2018).....46, 47, 50, 51

In re John Q. Hammons Hotels Inc. S'holder Litig.,
2009 WL 3165613 (Del. Ch. Oct. 2, 2009) 36

In re KKR Fin. Hldgs. LLC S'holder Litig.,
101 A.3d 980 (Del. Ch. 2014) 32

In re LNR Prop. Corp. S'holders Litig.,
896 A.2d 169 (Del. Ch. Nov. 4, 2005) 2

Malpiede v. Townson,
780 A.2d 1075 (Del. 2001) 21

In re Massey Energy Co. Deriv. & Class Action Litig.,
160 A.3d 484 (Del. Ch. May 2017) 1

MH Haberkorn 2006 Tr. v. Empire Resorts, Inc.,
C.A. No. 2020-0619-KSJM (Del. Ch. July 23, 2021)
(TRANSCRIPT) 52

Millenco L.P. v. meVC Draper Fisher Jurvetson Fund I, Inc.,
824 A.2d 11 (Del. Ch. 2002) 22

In re Mindbody, Inc. S'holder Litig.,
2023 WL 2518149 (Del. Ch. Mar. 15, 2023) 8

Morrison v. Berry,
191 A.3d 268 (Del. 2018) 5, 20, 21, 42

Olenik v. Lodzinski,
208 A.3d 704 (Del. 2019) 1, 28

Ortsman v. Green,
2007 WL 702475 (Del. Ch. Feb. 28, 2007) 37

In re PLX Tech. Inc. S'holders Litig.,
2018 WL 5018535 (Del. Ch. Oct. 16, 2018) 38

In re PNB Hldg. Co. S'holders Litig.,
2006 WL 2403999 (Del. Ch. Aug. 18, 2006) 26

RBC Cap. Mkts., LLC v. Jervis,
129 A.3d 816 (Del. 2015) 35

Rosenblatt v. Getty Oil Co.,
493 A.2d 929 (Del. 1985) 20

Sandys v. Pincus,
152 A.3d 124 (Del. 2016) 24

Sheldon v. Pinto Tech. Ventures, L.P.,
220 A.3d 245 (Del. 2019) 45, 46

Tornetta v. Musk,
310 A.3d 430 (Del. Ch. 2024) 22, 25

In re Trados Inc. S'holder Litig.,
73 A.3d 17 (Del. Ch. 2013) 24, 31

van der Fluit v. Yates,
2017 WL 5953514 (Del. Ch. Nov. 30, 2017) 51

Weinberger v. UOP, Inc.,
457 A.2d 701 (Del. 1983) 39

Zirn v. VLI Corp.,
681 A.2d 1050 (Del. 1996) 22, 31, 39

NATURE OF PROCEEDINGS

Delaware's judicial cleansing doctrine is built upon the bedrock principle that the stockholder voting franchise is "sacrosanct."[1] That principle requires strict application of judicial cleansing given its power to function as "a massive eraser, exonerating corporate fiduciaries for any and all of their actions or inactions."[2] Enforcing that delicate balance, this Court has repeatedly reversed pleading-stage dismissals where defendants failed to meet their burden to obtain judicial cleansing.[3]

Defendants have not met their burden. Affirmance would take "a massive eraser" to the take-private merger (the "Merger") of KnowBe4, Inc. ("KnowBe4" or the "Company"), which involves an indisputably majority-conflicted Board and three stockholders with mathematical voting control who rolled over approximately $800M of equity (the "Rollover Group"), whereas minority stockholders were cashed out at a price the special committee (the "Committee") representing minority stockholders had deemed "[n]ot in the right zone for a transaction."[4]

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[1] *EMAK Worldwide, Inc. v. Kurz*, 50 A.3d 429, 433 (Del. 2012).
[2] *See In re Massey Energy Co. Deriv. & Class Action Litig.*, 160 A.3d 484, 507 (Del. Ch. May 2017).
[3] *E.g.*, *City of Dearborn Police and Fire Revised Ret. Sys. v. Brookfield Asset Mgmt. Inc.*, 314 A.3d 1108 (Del. 2024); *City of Sarasota Firefighters' Pension Fund v. Inovalon Hldgs., Inc.*, 319 A.3d 271 (Del. 2024); *Olenik v. Lodzinski*, 208 A.3d 704 (Del. 2019); *Appel v. Berkman*, 180 A.3d 1055 (Del. 2018).
[4] A1278.

Delaware carefully scrutinizes conflicts arising from majority-conflicted boards and equity rollovers. As this Court has noted, rollovers place stockholders on the transaction's buy-side by "'align[ing] the economic incentives among participants in the post-transaction entity.'"[5] A rollover participant "stands on both sides" of the transaction and "would rationally agree to a lower sale price in order to secure a greater profit from his [rollover] investment,"[6] including because the rollover is an "exclusive opportunity to receive equity in the surviving entity" that can incentivize "agree[ment] to a lower sale price in order to secure a greater profit" on the rollover.[7]

Here, the Merger was secured by participation of the Rollover Group, which controlled ~70% of KnowBe4's voting power. The Rollover Group secretly engaged with Vista regarding the Merger and their rollover starting *before* the Merger process. During the process, the Rollover Group members were universally recognized—and treated—as KnowBe4's controllers. To secure the Merger, the Rollover Group concurrently entered support agreements whereby they rolled over shares, down-

[5] *Inovalon*, 319 A.3d at 278 n.29 (quoting Rollover Equity, Wall Street Prep, https://www.wallstreetprep.com/knowledge/rollover-equity/).
[6] *In re LNR Prop. Corp. S'holders Litig.*, 896 A.2d 169, 176, 178 (Del. Ch. Nov. 4, 2005).
[7] *Frank v. Elgamal*, 2014 WL 957550, at *28 (Del. Ch. Mar. 10, 2014) (internal quotations omitted).

converted Class B shares to circumvent the KnowBe4 Charter's equal treatment provision (the "Equal Treatment Provision"), and voted for the Merger.

The Trial Court erred in judicially cleansing the Merger based on a stockholder vote undermined by three material disclosure failures.

First, despite affirmatively characterizing the Committee members as "independent" *ten times*—including as a basis for the Board recommending the Merger—the Proxy omitted the at-least *potential* conflicts harbored by each Committee member, including active investments in Elephant and KKR. Each such conflicting relationship was disclosed and discussed during the Committee's July 13 discussion of its independence and disinterestedness. Yet the Trial Court ignored that tacit admission of at-least *potential* conflicts, defying applicable pleading-stage and judicial cleansing standards requiring disclosure of potential director conflicts, particularly where the director is described as independent. The Trial Court also reprised its improper imposition on plaintiffs of a pleading-stage burden to not only establish a material disclosure failure, but also tie it to an underlying process failure.

Second, despite repeatedly characterizing Morgan Stanley as "independent," the Proxy omitted that while advising the Committee on the Merger, Morgan Stanley held ~$550M of investments in Rollover Group member KKR, whose $300M rollover placed it on the Merger's buy-side. By ruling that information immaterial, the Trial Court (i) contravened Delaware law requiring disclosure of an advisor's

potential conflicts, including this Court's finding in *Brookfield* of a material disclosure failure involving a similar sized investment by the same advisor; and (ii) again improperly conflated the materiality inquiry with the separate process inquiry.

Third, the Proxy omitted that after learning the per-share Merger consideration would be lower than the Committee's pricing guidance to Vista, KKR essentially doubled the amount of KnowBe4 equity it would roll over on the Merger's buy-side (rather than sell more at the unexpectedly low cash-out price). That information was material because it directly informed the fairness of the Merger consideration received by cashed-out minority stockholders. In excusing that material omission, the Trial Court drew impermissible, unsupported defense-friendly inferences and relied on inapposite precedent.

Finally, the Trial Court erred in rejecting the pleading-stage inference of a control group. In rejecting the control group inference, the Trial Court applied a far tougher standard than this Court requires, and defied apposite precedent.

This Court should reverse.

SUMMARY OF ARGUMENT

1. Defendants cannot obtain judicial cleansing because Plaintiffs' well-pled allegations engender "a rational inference that material facts were not disclosed or that the disclosed information was otherwise materially misleading."[8] The Trial Court erroneously excused several material Proxy omissions:

   (i) *Special Committee Conflicts*: the Proxy repeatedly, affirmatively mischaracterized Committee members as "independent" when each member had actual and potential conflicts;

   (ii) *Committee Advisor Conflict*: the Proxy did not disclose Morgan Stanley's ~$550M investments with KKR, whose $300M rollover placed it on the Merger's buy-side; and

   (iii) *KKR Rollover Increase*: the Proxy did not disclose KKR's mid-process decision to dramatically increase its rollover upon learning the Merger price fell below the Committee's prior pricing guidance.

2. The Trial Court erroneously rejected the pleading-stage inference that Elephant, KKR, and Sjouwerman were a control group, despite their Merger-specific coordination and contemporaneous recognition as a control group by the Merger parties and advisors.

[8] *Morrison v. Berry*, 191 A.3d 268, 282 (Del. 2018).

STATEMENT OF FACTS[9]

A. Parties

Plaintiffs were KnowBe4 Class A stockholders pre-Merger.[10]

Defendant KnowBe4 is a cybersecurity company.[11]

Defendant Sjouwerman founded KnowBe4, was CEO and a director since its inception, and controlled 4.2% of KnowBe4's voting power.[12]

Defendant KKR was a KnowBe4 stockholder since 2019, and controlled 26.4% of KnowBe4's voting power.[13]

Defendant Elephant was a KnowBe4 stockholder since 2016, and controlled 37.5% of KnowBe4's voting power.[14]

Defendants Sjouwerman, Elephant and KKR executed support agreements in connection with the Merger, rolling over $55M, $425M and $300M of equity, respectively.[15]

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[9] A fulsome factual recitation is set forth at A1282-A1315 and expressly incorporated herein.
[10] A0048(¶¶13-14).
[11] A0048(¶15).
[12] A0048-49(¶16).
[13] A0057(¶¶33-34).
[14] A0057-A0058(¶¶35-36).
[15] A0140(¶¶280-82).

The Director Defendants—Daly, Shanley, Klausmeyer, Sjouwerman, Venkataraman, Watzinger, and Wilson—issued the Proxy.[16] Klausmeyer, Venkataraman, and Watzinger constituted the Committee.[17]

B. Sjouwerman Founds KnowBe4; Elephant and KKR Become Anchor Investors

Sjouwerman founded KnowBe4 in 2010.[18] Elephant and KKR became anchor investors alongside Sjouwerman in 2016 and 2019, respectively, with Elephant partner Daly and KKR partner Shanley joining the Board upon their initial investments. Elephant and KKR jointly invested in subsequent financing rounds.[19] Through those investments, Elephant and KKR acquired rights to jointly control KnowBe4's management and Board, day-to-day business operations, and stock repurchases.[20]

C. Vista Explores Acquisition, then Purchases Rollover Group Shares Ahead of KnowBe4's IPO

KnowBe4's rapid growth continued into early 2020.[21] In March 2020, Vista explored acquiring KnowBe4.[22] Venkataraman led discussions for KnowBe4, which

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[16] A0049-57(¶¶17-32).
[17] A0085(¶124).
[18] A0060(¶¶42-43).
[19] A0061-62(¶¶50-51), A0062-63(¶¶54-58), A0063-64(¶60), A0065(¶63).
[20] A0064-65(¶¶61-62).
[21] A0065(¶64).
[22] A0065(¶64), A0066(¶68).

hired Morgan Stanley as financial advisor.[23] In March 2021, after a year of discussion and diligence, Vista instead acquired KnowBe4 preferred shares from Elephant, KKR and another investor for $300M.[24]

In April 2021, KnowBe4 went public.[25] Thereafter, the Rollover Group collectively possessed majority voting power through their super-voting Class B shares.[26] KnowBe4's Charter's Equal Treatment Provision required equal treatment of single-vote Class A and ten-vote B shares in any merger absent separate approval from those share classes.[27]

D. Vista Plans Take-Private with the Rollover Group, which Presents the Merger and Their Rollover to the Board

In May 2022, KnowBe4 posted record financial results, beating guidance "across the board[.]"[28]

Consistent with its "playbook,"[29] Vista leveraged its advantage gained from pre-IPO discussions to jumpstart takeover negotiations with the Rollover Group.[30]

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[23] A0065(¶64), A0066(¶68).
[24] A0067(¶72).
[25] A0067-68(¶73), A0069(¶79).
[26] A0067-68(¶73), A0068-69(¶¶76-77).
[27] A0068(¶74).
[28] A0074(¶92).
[29] *In re Mindbody, Inc. S'holder Litig.*, 2023 WL 2518149, at *14 (Del. Ch. Mar. 15, 2023).
[30] A0073(¶89).

Vista contacted Shanley to discuss KKR's sale interest.[31] Between May 26 and June 22, Vista held five meetings involving Rollover Group members—including on June 16 with all three Rollover Group members and another joint meeting with Sjouwerman and Daly—to discuss a potential sale.[32] Vista also met with Venkataraman who, along with his wife, had active investments in Elephant and KKR.[33]

The Board learned of these discussions at a June 28 Board meeting, when the Rollover Group also disclosed its intent to roll over equity in a transaction.[34] That rollover conflict prompted discussion of forming a special committee.[35]

On July 5, the Board recommended forming the Committee comprised of Venkataraman—who had just resigned as KnowBe4's CFO—Klausmeyer, and Watzinger despite conducting no investigation and making no determinations regarding their independence.[36]

On July 7, the proposed Committee contacted Morgan Stanley to serve as its financial advisor.[37]

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[31] A0075(¶95).
[32] A0075-76(¶¶96-100).
[33] A0080(¶110).
[34] A0076-77(¶¶101-03).
[35] A0078(¶105).
[36] A0050(¶20), A0054(¶28), A0078-79(¶¶106-07).
[37] A0082(¶115).

At a Committee meeting that day, the proposed members reaffirmed the rollover-related conflicts, noting "that certain members of Company management [*i.e.*, Sjouwerman] and the investment funds [*i.e.*, Elephant and KKR] affiliated with certain Board members [*i.e.*, Shanley and Daly] may be interested in rolling some or all of their equity in the Company in a potential Merger."[38] Morgan Stanley advised that KnowBe4 "did not have to engage in a sale at this juncture…and therefore, the Committee was in a strong position [regarding] a Potential Transaction."[39]

E. The Board Establishes the Committee and Implements *MFW*'s Dual Protections

On July 11, the Board formally established the Committee consisting of Venkataraman, Klausmeyer, and Watzinger[40] via a unanimous written consent subjecting any transaction wherein the Rollover Group rolled over shares to *MFW*'s dual protections.[41]

On July 13, the Committee reviewed Delaware's standard for "controlling stockholder transactions" and "the *MFW* framework."[42] The Committee members also discussed and disclosed their potential or actual conflicts, including: (i) Venkataraman and his wife's investments with KKR and invite-only Elephant; (ii)

[38] A0082-83(¶116).
[39] A0084(¶120).
[40] A0085(¶124).
[41] A0085-86(¶¶124-25).
[42] A0087(¶128).

Klausmeyer's service as Vista's designee on the board of Vista-controlled Jamf Holding Corp ("Jamf"), and on the board of KKR portfolio company Ivalua alongside KKR's Shanley; and (iii) Watzinger's investments in KKR and relationships with Vista partners.[43] Neither Venkataraman nor Watzinger disclosed—nor does the pleading-stage record otherwise identify—the specific Elephant and KKR funds in which Venkataraman and Watzinger were invested, or the size of those investments, or their profitability.[44] The Committee failed to investigate those conflicts.[45]

At that meeting, the Committee decided to retain Morgan Stanley,[46] whose July 12 conflicts disclosure (the "July 12 Memo") disclosed: (i) $125M-180M in fees from KnowBe4, Vista, and KKR in the prior two years; (ii) unspecified current engagements with Vista, KKR, and their affiliates; and (iii) equity holdings of up to 2% in entities affiliated with Vista and/or the Rollover Group.[47] The July 12 Memo failed to disclose: (i) $550M+ of investments in KKR and its affiliates, including a $200M+ investment directly in KKR's parent entity; (ii) an additional $80M in fees

[43] A0706; *see also* A0087-89(¶¶130-33).
[44] *Id*.
[45] A0089-90(¶134).
[46] A0090(¶135).
[47] A0090(¶¶135-36).

Morgan Stanley received from entities and/or transactions in which Vista held a minority stake; and (iii) concurrent or recent Vista and KKR engagements.[48]

F. The Committee Perpetuates Vista's Advantage, and Works with the Rollover Group Toward the Merger

On July 14, the Committee met and discussed the Merger, including "considerations relating to the *MFW* framework[.]"[49] Despite acknowledging the expansive field of potential buyers, the Committee and Morgan Stanley focused on Vista.[50]

On July 18, notwithstanding Morgan Stanley's prior advice that KnowBe4 was a "Highly Strategic Asset" with potential interest from a "Large Number of Sponsors," the Committee shrank its 29 potential buyer field to just four financial sponsors.[51] KKR advised the Committee through counsel that "KKR would primarily be a seller...but...would consider providing equity financing for Vista."[52] Three days later, KKR partner (and KnowBe4 director) Shanley told Morgan Stanley that KKR would roll over $150M-200M in a sale to Vista.[53]

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[48] A0090-92(¶¶137-40).
[49] A0093-95(¶¶144-48).
[50] *Id*.
[51] A0098(¶157).
[52] A0095(¶149).
[53] A0099(¶160).

At its July 28 and 29 meetings, the Committee discussed how to solicit the Rollover Group's views regarding a sale to Vista given their collective voting control over KnowBe4.[54] The Committee determined to keep them apprised of the process.[55]

On August 4,[56] the Committee discussed its upcoming August 5 meeting with KKR's Shanley and Elephant's Daly. The Committee agreed to give them "an overview of the expected timeline...and the scope of parties…Morgan Stanley had contacted" because, as the Committee acknowledged, "KKR and Elephant...controlled a majority of the Company's voting power and, therefore, the Company would not be able to consummate a Potential Transaction without their consent."[57]

By August 17, Morgan Stanley had just begun meeting with non-Vista bidders.[58] The Committee convened that day, recognized Vista's "advantage" over other bidders and considered "paus[ing] Vista's due diligence," but elected not to.[59]

[54] A0102(¶168), A0103(¶173).
[55] *Id*.
[56] A0104(¶174).
[57] A0106(¶179), A0107(¶183).
[58] A0108(¶187).
[59] A0109(¶188).

G. The Committee Reveals Its Pricing Views to Vista and the Rollover Group Before Receiving Any Merger Proposals

On August 19, Morgan Stanley informed the Committee that only Vista was conducting diligence and had been doing so for weeks.[60] Morgan Stanley nevertheless presented a timeline contemplating initial bids in less than two weeks, confirmatory diligence and negotiations in that second week, and deal signing in three weeks.[61] Using extrapolated projections that excluded upcoming product releases and assumed zero revenue for certain KnowBe4 business lines,[62] Morgan Stanley presented financial analyses yielding midpoint values ranging from $28 to over $45 per share.[63] Numerous other analyses yielded values well above $25.

Based on those valuation discussions, the Committee determined that "mid-to-high $20s" was "the right zone" for a transaction, and "it did not make sense to proceed with Vista unless it shared a similar view to the Committee on valuation."[64] Morgan Stanley's materials reflect that $23 to $25 per share was "[n]ot the right zone for a transaction," and that $25 to $26 was at the "[l]ow end of guidance" and would

[60] A0109-10(¶¶189-90).
[61] A0110-11(¶192).
[62] A0108(¶185).
[63] *Id*.
[64] A0112(¶195).

"need some work[.]"[65] The Committee authorized Morgan Stanley to convey its valuation views to Vista, but no other bidder.[66]

On August 26, Vista indicated alignment on the Committee's valuation views,[67] and the Committee determined to provide (only) Vista data room access.[68]

On September 2, Morgan Stanley reported that Vista expected to substantially complete diligence by September 9.[69] The Committee decided to disclose its valuation views to Elephant and KKR.[70]

H. Vista Coordinates the Rollover Group's Rollovers Before Submitting Its Bid

On September 7, Vista asked Morgan Stanley to solicit Elephant and KKR's anticipated rollover commitments. The Committee granted Vista's request the next day, disregarding Morgan Stanley's warning that disclosing rollover information "may impact the pricing for the transaction."[71]

On September 13, Morgan Stanley met with Elephant and KKR, who, based on the parties' pricing assumptions, conveyed they would roll over approximately

[65] A0112(¶196).
[66] A0113(¶198), A0114(¶201).
[67] A0115(¶203).
[68] A0116(¶208).
[69] A0119(¶215).
[70] A0120(¶220).
[71] A0122(¶¶226-27).

50% ($427M) and 31% ($200M) of their respective stakes.[72] Morgan Stanley informed Vista,[73] calculating the total Rollover Group rollover at approximately $695M.[74]

On September 15, the Committee and Morgan Stanley discussed Vista's forthcoming proposal, reaffirming that anything below $25 was "[n]ot the right zone for a transaction," "[u]nless [Vista] can see [its] way into the mid-to upper $20's, then it's not worth sending in a letter," and $25-27 was at the "[l]ow end of guidance" and "will need some work."[75] Morgan Stanley also recommended—and the Committee agreed—to suspend market outreach until after Vista submitted its proposal, even though a "Tier 1" sponsor had asked to reconnect, fifteen "Tier 2" potential acquirers had not been contacted, and other potential acquirers were active and "remained viable options."[76]

I. Vista Submits Its Underpriced Bid

On September 16, expressly referencing its expectation that the Rollover Group would stand on both sides of the transaction, Vista proposed to acquire KnowBe4 for $24 per share.[77] Vista stated that, given the Rollover Group's

[72] A0123(¶232).
[73] A0123-24(¶¶232-33).
[74] A0124(¶233).
[75] A0124(¶¶233-34).
[76] A0124-25(¶235).
[77] A0127(¶240).

anticipated rollover, it "expect[ed] the transaction to be expressly conditioned on the *MFW* framework."[78] Morgan Stanley told Vista its offer was below where the parties had aligned on pricing; Vista responded it "would not be able to move significantly[.]"[79]

On September 17, (i) Vista requested Committee approval to contact the Rollover Group regarding their rollovers; (ii) disregarding its own pricing guidance, the Committee authorized countering at $26.50 per share, and (iii) the Committee determined to—and subsequently did—meet with the Rollover Group to discuss and receive feedback on Vista's proposal.[80]

The next day, the Committee granted KKR access to the same diligence materials it gave Vista.[81] The Committee also permitted Vista to discuss the transaction and rollovers directly with Elephant and KKR.[82]

J. The Committee Accepts the Inadequate Merger Price

On September 28, Vista submitted a revised $24.60 proposal, stating it was "prepared to move expeditiously to reach a definitive agreement by October 7,

[78] *Id*.
[79] *Id*.
[80] A0127-28(¶¶242-43).
[81] A0128(¶245), A0130(¶251).
[82] A0130(¶251).

2022[.]"[83] On September 29, the Committee countered at $25.75, and said Vista should go "as far into the $25.00s as Vista could."[84]

Morgan Stanley told the Committee it had disclosed the latest pricing negotiations to KKR, which had responded by advising it expected to increase its rollover.[85]

Morgan Stanley then conveyed the Committee's $25.75 counteroffer to Vista, which countered at $24.80.[86] The Committee responded with $24.90 and Vista accepted, subject to the Rollover Group rolling over at least $682M.[87]

K. The Rollover Group Down-Converts Their Class B Shares to Preordain the Stockholder Vote; KKR Essentially Doubles its Rollover; the Board Approves the Merger

The Rollover Group's rollover constituted disparate consideration for Class A and B stockholders, requiring separate approval from each class under the Charter's Equal Treatment Provision.[88] Because the Merger consideration fell below KnowBe4's intrinsic value and the Committee's pricing guidance, the parties feared minority stockholders would reject the Merger.[89]

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[83] A0132-33(¶¶256-57).
[84] A0133(¶258).
[85] A0134(¶260).
[86] A0135(¶¶262-63).
[87] A0135(¶264), A0136(¶266).
[88] A0131-32(¶¶254-55), A0137(¶270).
[89] *Id*.

Thus, on October 9, Vista proposed that the Rollover Group and Vista down-convert their Class B shares into Class A shares to ensure Class A approval, which the Committee quickly approved despite acknowledging the "market perception and transaction optics" it would create.[90]

On October 10, the Committee learned KKR intended to roll over $300M (46% of its equity)—as much as doubling its previously planned $150M-200M.[91] The Rollover Group's combined rollover thus increased to $783M.[92]

On October 11, the Committee recommended—and the Board approved—the Merger.[93] The Rollover Group members executed nearly-identical support agreements, committing to roll over shares, down-convert their Class B shares, and vote for the Merger.[94]

L. KnowBe4 Issues the Materially Deficient Proxy; the Merger Closes

KnowBe4 filed the Proxy on December 22, 2022.[95] Stockholders approved the Merger on January 31, 2023, and it closed on February 1.[96]

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[90] A0138(¶272).
[91] A0138(¶273).
[92] A0138(¶274).
[93] A0139(¶276), A0140(¶278).
[94] A0140-41(¶¶280-82), A0142(¶285).
[95] A0145(¶291).
[96] *Id*.

ARGUMENT

I. DEFENDANTS HAVE NOT MET THEIR BURDEN TO ESTABLISH ENTITLEMENT TO VOTE-BASED JUDICIAL CLEANSING

A. Question Presented

Whether the Trial Court erred in finding Plaintiffs failed to plead a material misrepresentation or omission in the Proxy. The question was raised below[97] and considered by the Trial Court.[98]

B. Scope of Review

This Court reviews materiality determinations *de novo*.[99]

C. Merits of Argument

Defendants cannot satisfy "their burden for triggering application" of judicial cleansing because the Complaint "supports a rational inference that material facts were not disclosed or that the disclosed information was otherwise materially misleading."[100]

Information is material if "a reasonable shareholder would consider it important in deciding how to vote."[101] Materiality "'does not require proof of a substantial likelihood that disclosure of the omitted fact would have caused the

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[97] A1370-A1396.
[98] May 27, 2026 Memorandum Opinion (Exhibit A) (the "Opinion," and cited herein as "Op. _") at 32-48.
[99] *See, e.g.*, *Morrison*, 191 A.3d at 282.
[100] *Id*.
[101] *Id*. (quoting *Rosenblatt v. Getty Oil Co.*, 493 A.2d 929, 944 (Del. 1985)).

reasonable investor to change his vote,'" only that it would have "altered the total mix of information made available."[102] "[M]ateriality determinations…are necessarily fact-intensive and do not generally lend themselves to dismissal on the pleadings."[103]

"Partial disclosure, in which some material facts are not disclosed or are presented in an ambiguous, incomplete, or misleading manner, is not sufficient to meet a fiduciary's disclosure obligations."[104] Thus, "when a board chooses to disclose a course of events or to discuss a specific subject, it has long been understood that it cannot do so in a materially misleading way, by disclosing only part of the story, and leaving the reader with a distorted impression."[105]

1. The Proxy Omitted the Committee Members' Conflicts

The Trial Court erred in finding that the Proxy—which repeatedly described the Committee members as "independent" and "disinterested"[106]— need not disclose their potential or actual conflicts.

Delaware law is clear that directors must not only disclose *actual* conflicts, but also that "a director's *potential* conflict" is material information requiring

[102] *Id.* at 283-84 (citation modified).
[103] *Malpiede v. Townson*, 780 A.2d 1075, 1086 (Del. 2001).
[104] *Appel*, 180 A.3d at 1064 (citation modified).
[105] *Id.*
[106] A0251, A0262, A0292, A0293, A0312, A0313, A0316.

disclosure.[107] "[W]here...omitted information goes to the independence or disinterest of directors who are identified as the company's 'independent' or 'not interested' directors, the 'relevant inquiry is not whether an actual conflict of interest exists, but rather whether full disclosure of potential conflicts of interest has been made.'"[108] Indeed, where a committee's purported independence is promoted "as a reason for voter confidence, any undisclosed information weighing against the disinterestedness of the committee, its members, and its advisors '[is] extremely relevant to a reasonable stockholder's' decisionmaking.'"[109]

Here, the Proxy affirmatively described the Committee members as "independent" and "disinterested" *ten times*:

- "KnowBe4's Board…formed a Special Committee of the KnowBe4 Board comprised solely of *independent and disinterested* directors"[110];
- "In…reaching its determination and making its [Merger] recommendation, the [] Board considered….the following non-exhaustive list of material factors….that (1) it was negotiated by the Special Committee consisting solely of *independent* (for purposes of serving on the Special Committee) *and disinterested* directors that are

[107] *Tornetta v. Musk*, 310 A.3d 430, 521-22 (Del. Ch. 2024), *rev'd on other grounds*, *In re Tesla, Inc. Deriv. Litig.*, 351 A.3d 1005 (Del. 2025)(emphasis added).
[108] *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund I, Inc.*, 824 A.2d 11, 15 (Del. Ch. 2002); *Eisenberg v. Chi. Milwaukee Corp.*, 537 A.2d 1051, 1061 (Del. Ch. 1987) ("[Stockholders] were entitled to know that certain [] fiduciaries had a self-interest that was arguably in conflict with their own, and the omission of the fact was material.").
[109] *Allen v. Harvey*, 2023 WL 7122641, at *5 (Del. Ch. Oct. 30, 2023) (quoting *Zirn v. VLI Corp*., 681 A.2d 1050, 1057 (Del. 1996)).
[110] A0251 (emphasis added).

not affiliated with, and are *independent* of, any of the potential counterparties to a potential acquisition of KnowBe4…and were otherwise *disinterested and independent* with respect to a potential acquisition of KnowBe4…."[111]

- "Special Committee means a committee established by the KnowBe4 Board comprised solely of *independent and disinterested* members of the KnowBe4 Board"[112];

- "Wilson Sonsini provided an overview of…approaches for mitigating or neutralizing such conflicts of interest, including creating a special committee of *independent and disinterested* members of the KnowBe4 Board….[T]he KnowBe4 Board determined that each of Gerhard Watzinger, Kevin Klausmeyer and Krish Venkataraman were *independent and disinterested*"[113];

- "[T]he Special Committee concluded that each member was *independent and disinterested* for purposes of evaluating a potential acquisition of the Company"[114];

- "*Independence*. The Special Committee, since its formation, has consisted solely of *independent…and disinterested* directors that are not affiliated with, and are *independent* of, any of the potential counterparties to a potential acquisition of KnowBe4…and were otherwise *disinterested and independent* with respect to a potential acquisition of KnowBe4."[115]

The Board's repeated affirmative descriptions of the Committee members as "independent"—including as a "material factor" underlying the Board's

[111] A0316 (emphasis added).
[112] A0262 (emphasis altered).
[113] A0292 (emphasis added).
[114] A0293 (emphasis added).
[115] A0312-13 (emphasis added).

"determination" and "recommendation" that stockholders vote for the Merger[116]—while omitting the members' potential and actual conflicts is, at minimum, an improper "[p]artial disclosure, in which some material facts are not disclosed or are presented in an ambiguous, incomplete, or misleading manner, [which] is not sufficient to meet a fiduciary's disclosure obligations."[117]

Venkataraman. The Proxy failed to disclose that Committee Chairman Venkataraman—and his wife—held investments in Rollover Group members Elephant and KKR, both of which were on the Merger's buy-side. Those investments establish a pleading-stage inference that Venkataraman lacked independence from Elephant and KKR.[118] Indeed, Venkataraman tacitly conceded that these investments constituted at least *potential* conflicts by disclosing them at the Committee's July 13 meeting when "asked…about [his] independence and disinterestedness with respect to the Company, Vista, KKR[], and Elephant[.]"[119]

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[116] A0316.
[117] *Appel*, 180 A.3d at 1064.
[118] *See, e.g.*, *Sandys v. Pincus*, 152 A.3d 124, 131 (Del. 2016) (finding directors not independent of controller where they had "a mutually beneficial network of ongoing business relations" based on past investments); *In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 54-55 (Del. Ch. 2013) ("*Trados II*") (finding post-trial a director lacked independence where he served previously as an executive at one of the controller's portfolio companies and invested "about $300,000 in three [controller] funds").
[119] A0706.

Given these circumstances:

> the Proxy could have discussed the relevant relationships while stating that the Board did not view them as serious impediments to independence, thereby allowing stockholders to make their own assessment…*What defendants were not free to do was to take the position that the stockholders had no right to know this information because they, the defendants, had determined it was not important*.[120]

The Board chose that second, improper path in dismissing—and then not disclosing—these conflicts.[121] On that basis alone, this Court should reverse.

The Trial Court's analysis underlying that decision betrays multiple additional errors.

First, the Trial Court improperly imposed on Plaintiffs a pleading-stage burden to establish not only a material disclosure failure, but also an underlying process issue.

[120] *Tornetta*, 310 A.3d at 523 (emphasis added).
[121] A0089-90(¶134).

As Defendants recognized contemporaneously with the Merger,[122] in the Proxy,[123] and in their briefing below[124]—and as Delaware law confirms[125]—Elephant and KKR were conflicted by their participation on the Merger's buy-side. Indeed, the Opinion acknowledged that "[b]ecause the rollover posed a potential conflict, the Special Committee excluded KKR from its negotiations with Vista,"[126] and that "it is theoretically possible that holdings in a rollover stockholder standing alone would create a potential conflict of interest."[127]

Nevertheless, the Trial Court excused the Board's failure to disclose Venkataraman's conflicts as to KKR and Elephant (*i.e.*, two of the three Rollover

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[122] *E.g.*, A0730 ("[T]he Committee determined that neither KKR nor Mr. Shanley should have a role in the Committee's process due to the potential for conflicts of interest should KKR decide to roll some or all of their equity in the Company….").
[123] A0339 (Proxy disclosure that Elephant and KKR "may have interests in the Merger that are different from, or in addition to, [stockholders'] interests").
[124] A1559 ("While Plaintiffs allege that Sjouwerman was conflicted due to his rollover…this alone does not state a *Revlon* claim because *this conflict* was disclosed and managed…." (emphasis added)).
[125] *Supra* at 2 (quoting *Inovalon*, *Frank* and *LNR*); *Anchorage Police & Fire Ret. Sys. v. Adolf*, 2025 WL 1000153, at *1 (Del. Ch. Apr. 3, 2025) ("A 20% stockholder…agreed to rollover its shares and port the company's debt to the post-merger entity….[T]his arrangement placed the stockholder in conflict with the company's minority stockholders."); *In re PNB Hldg. Co. S'holders Litig.*, 2006 WL 2403999, at *12 (Del. Ch. Aug. 18, 2006) ("the defendants' status as major stockholders who were eligible to remain [invested in the post-transaction company] rendered them conflicted").
[126] Op. 40.
[127] Op. 34.

Group members) on the purported basis that "[t]here are no allegations that KKR or Elephant influenced the Special Committee's negotiations with Vista."[128]

By requiring Plaintiffs to establish, at the pleading stage, both a material disclosure failure *and* an intertwined process failure, the Trial Court reprised an error underlying its reversal in *Brookfield*. In *Brookfield*, this Court underscored that assessing a potential disclosure failure "is a different inquiry"—and must occur independently—from assessing a potential process failure *related to* that disclosure issue.[129] By condoning the Board's omission of Venkataraman's Elephant and KKR conflicts on the ostensible basis that the conflict did not influence negotiations, the Trial Court contravened *Brookfield* by conflating: (i) "the question of whether the conflict was sufficiently material to require disclosure in the Proxy,"[130] with (ii) the question of *how* that conflict impacted the process.[131] Under Delaware law, Plaintiffs

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[128] Op. 35. *See also id.* ("This was a clean process.").

[129] *Brookfield*, 314 A.3d at 1131 ("The legal standard for determining whether a special committee breached its duty of care in hiring and managing its advisors is whether it is reasonably conceivable that the committee exhibited 'gross negligence.' By contrast, whether a special committee's advisor's conflicts were material information requiring disclosure is a different inquiry."). *See also id.* at 1130 ("[W]hether the Special Committee breached its duty of care in the retention of the advisors does not adequately address the question of whether the conflict was sufficiently material to require disclosure in the Proxy.").

[130] *Id.* at 1130.

[131] *Id.* at 1132 ("It does not matter whether the financial advisor's opinion was ultimately influenced by the conflict…the presence of an undisclosed conflict is still significant").

foreclosed judicial cleansing by establishing a pleading-stage inference that "the conflict was sufficiently material to require disclosure[.]"[132] Allegations establishing the potential conflict's impact on the process are not required.

Second, the Trial Court defied well-established pleading and judicial cleansing standards by requiring Plaintiffs to prove that Venkataraman's conflicts with Elephant and KKR superseded his "economic incentives to maximize the deal value."[133] To secure pleading-stage judicial cleansing, *Defendants* must establish that all material facts—including potential director conflicts—were disclosed. The Court "must 'accept as true all of the plaintiff's well-pleaded facts,' and 'draw all reasonable inferences' in plaintiff's favor."[134]

Specifically, the Trial Court held that Plaintiffs "fail[ed] to grapple with the fact that Venkataraman had significant economic incentives to maximize the deal value."[135] The Trial Court did not specify those "significant economic incentives,"[136] much less explain how they could completely negate the incentives arising from Venkataraman's relationships with Elephant and KKR as to justify concealing those relationships from stockholders. The Trial Court narrowly focused on the "economic

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[132] *Id.*
[133] Op. 35.
[134] *Olenik*, 208 A.3d at 714 (quoting *Allen v. Encore Energy P'rs*, *L.P.*, 72 A.3d 93, 100 (Del. 2013)).
[135] Op. 35.
[136] *Id*.

incentives" specific to the Merger itself, namely "the overall rollover, and the size of the director's stake in the rollover stockholder,"[137] while ignoring the impact of Venkataraman's—and his wife's—investment relationships with Elephant and KKR *beyond* the Merger, including the valuable *future* investment opportunities arising from those relationships.

Further defying the plaintiff-friendly pleading standards, the Trial Court then dismissed Plaintiffs' allegations regarding Venkataraman's conflicts because Plaintiffs purportedly do not allege "that Venkataraman or his wife were invested in the precise Elephant funds that rolled over their equity."[138] But that goes only to Venkataraman's interestedness in the Merger, not his independence from the Rollover Group, which also required disclosure. Moreover, Plaintiffs could not plead the interestedness specifics improperly demanded by the Trial Court because Defendants omitted from the July 13 minutes (and all other pleading-stage records) any information regarding those investments, including their precise nature, size and profitability. But the fact that Venkataraman disclosed those investments to the Committee and its advisors as potential conflicts supports a pleading-stage inference of materiality to a reasonable stockholder evaluating Venkataraman's touted "independence."

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[137] *Id*.
[138] Op. 35.

The specifics Plaintiffs could and did allege more than suffice. Plaintiffs alleged—and Defendants did not dispute—that (i) Venkataraman's investments in Elephant were "invitation only"[139]; (ii) the average investment in Elephant's funds is ~$5M[140]; and (iii) individual investors in funds like Elephant are rare and, when permitted, typically involve an individual with a "special relationship" to the fund and a sizable capital commitment.[141] Those allegations further support a pleading-stage materiality inference. The Trial Court contravened Delaware's pleading-stage standards by holding otherwise.

Klausmeyer. Committee member Klausmeyer served: (i) "as one of [Vista's] contractual board designees" on the board of Vista-controlled Jamf;[142] and (ii) alongside KKR partner Shanley on the board of KKR portfolio company Ivalua.[143] The Proxy disclosed that Klausmeyer served on the Jamf and Ivalua boards, yet omitted those companies' affiliations with Vista (*i.e.*, the acquiror in the Merger) and KKR (*i.e.*, one of the three Rollover Group members), respectively. Omitting that material information concealed Klausmeyer's Vista and KKR affiliations, and

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[139] A0210.
[140] A0080-81(¶111); *see also* A0210 n.4 (listing certain Elephant funds and the number of investors).
[141] A0080-81(¶¶110-111).
[142] Op. 36. Vista kept Klausmeyer on Jamf's board after Jamf's IPO, securing for Klausmeyer $1.2M in Jamf director fees between 2019 and 2023. A0051(¶22).
[143] Op. 36.

misleadingly buttressed the Proxy's repeated representations that he was "independent" by falsely suggesting professional roles and income sources *unrelated* to Vista and KKR.

As the Trial Court acknowledged, "being appointed by an investor on multiple boards can give rise to a 'sense of owingness[.]'"[144] By repeatedly describing Klausmeyer as "independent" and affirmatively touting his Jamf and Ivalua directorships, the Board obligated itself to also disclose his Jamf- and Ivalua-related affiliations with Vista and KKR. By omitting those facts and repeatedly characterizing Klausmeyer as "independent," the Proxy falsely suggested Klausmeyer had no affiliation with Vista or KKR whatsoever. At minimum, those relationships indicate a *potential* conflict requiring full and complete disclosure under the partial disclosure doctrine.[145] As with Venkataraman, Klausmeyer

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[144] Op. 37 (quoting *City of Hialeah Emps. Ret. Sys. ex rel. of nCino, Inc. v. Insight Vent. P'rs, LLC*, 2023 WL 8948218, at *8 (Del. Ch. Dec. 28, 2023), *aff'd*, 326 A.3d 1201 (Del. 2024) ("This Court has reasoned that a controller with a history of appointing a director to boards, and the capability to appoint that director to more boards in the future, can inspire a sense of owingness that casts reasonable doubt on the director's impartiality."). *See also, e.g.*, *Atallah v. Malone*, 2023 WL 4628774, at *8-9 (Del. Ch. July 19, 2023) (director lacked independence where he had "served as a director of various [controller]-affiliated companies"); *Trados II*, 73 A.3d at 54-55 (director had a "sense of owingness" toward a venture capital fund where they had a "long history" and the fund appointed the director to multiple boards).

[145] *See Zirn*, 681 A.2d at 1056 ("once defendants travel[] down the road of partial disclosure" they must provide "an accurate, full and fair characterization" (quotations and citation omitted)).

disclosed—and the Committee and its advisors discussed, but disregarded—his affiliations with Vista and KKR at the July 13 Committee meeting. The Trial Court ignored that fact and resulting inference of and at-least *potential* conflict.

Relying on inapposite case law addressing what constitutes (i) an *actual*, rather than *potential* conflict (ii) *outside* the disclosure context,[146] the Trial Court concluded "Klausmeyer's board positions do not present a conflict."[147] Apposite case law confirms that by referencing Klausmeyers's Jamf and Ivalua directorships while affirmatively describing him as "independent," the Proxy had to disclose the *potential* conflict posed by those same directorships.

Watzinger. Watzinger served as an ostensibly independent Committee member despite holding investments in KKR[148] and having relationships with several Vista partners, none of which the Proxy disclosed. In excusing those omissions within a single paragraph of its Opinion, the Trial Court repeated the errors undermining its holdings as to the other Committee members' undisclosed conflicts.

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[146] *DiRienzo v. Lichtenstein*, 2013 WL 5503034, at *12-13 (Del. Ch. Sep. 30, 2013) (assessing alleged conflicts in context of argument "that the Special Committee directors breached their duty of loyalty by virtue of their lack of independence"); *In re KKR Fin. Hldgs. LLC S'holder Litig.*, 101 A.3d 980, 996 (Del. Ch. 2014) (same); *Franchi v. Firestone*, 2021 WL 5991886, at *4-5 (Del. Ch. May 10, 2021) (same).
[147] Op. 38.
[148] A0147-48(¶¶295-96).

The Trial Court admitted that it disregarded Watzinger's KKR investments "for the same reasons" it disregarded Venkataraman's (and his wife's) KKR investments.[149] Thus, in excusing the non-disclosure of Watzinger's KKR investments, the Trial Court repeated its errors in excusing the non-disclosure of Venkataraman's KKR (and Elephant) investments.

And as with Klausmeyer, the Trial Court defied applicable pleading-stage and judicial cleansing standards regarding disclosure of *potential* conflicts, instead applying the inapplicable standard for establishing an *actual* conflict *outside* the disclosure context.[150]

Finally—as with Venkataraman and Klausmeyer—the Trial Court erroneously ignored that these affiliations were identified and discussed at the July 13 Committee meeting, thus confirming they constitute at least *potential* conflicts.

2. The Proxy Repeatedly Described Morgan Stanley as "Independent," Yet Omitted Its Potential and Actual Conflicts

"Because of the central role played by investment banks in the evaluation, exploration, selection, and implementation of strategic alternatives, the Court of Chancery has required full disclosure of investment banker compensation and

[149] Op. 38.
[150] *Id*. (citing *Beam v. Stewart*, 845 A.2d 1040, 1050 (Del. 2004)).

potential conflicts."[151] Here, the Proxy repeatedly characterized Morgan Stanley as "independent,"[152] yet omitted material facts concerning its conflicts.

Specifically, when discussing Morgan Stanley's relationship with KKR, the Proxy discloses the fees Morgan Stanley earned from KKR in the prior two years, but omitted that, while advising the Committee on the Merger, Morgan Stanley held *over half-a-billion dollars* (~$550M) of KKR investments.[153] That fact is material, especially considering Morgan Stanley's other financial entanglements with KKR, including: (i) receiving ~$100M in fees from KKR pre-Merger;[154] and (ii) at least three undisclosed concurrent engagements with KKR in transactions worth tens of billions of dollars.[155] At minimum, by repeatedly characterizing Morgan Stanley as "independent" and disclosing a subset of its ties to KKR, the Proxy "traveled down

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[151] *Brookfield*, 314 A.3d at 1132 (citation modified) (emphasis added). *See also In re Del Monte Foods Co. S'holders Litig.*, 25 A.3d 813, 832 (Del. Ch. 2011) ("This Court…require[s] full disclosure of investment banker compensation and *potential* conflicts." (emphasis added)).

[152] *E.g.*, A0251, A0267, A0284, A0292-93, A0309, A0313, A0316.

[153] A0156(¶¶320-21); A0327-28.

[154] A0090(¶136).

[155] A0091-92(¶139); *see In re EngageSmart, Inc. S'holder Litig.*, 354 A.3d 796, 831 (Del. Ch. 2026) ("Concurrent engagements with entities and individuals are material facts that must be disclosed to stockholders."). Specifically, Morgan Stanley concurrently represented KKR in KKR's: (i) joint-acquisition of half of Vodafone's ~€13 billion stake in Vantage Towers AG; (ii) €19B acquisition of Telecom Italia's fixed-line network; and (iii) IPO of Onestream. A0091-92(¶139).

the road of partial disclosure," requiring full disclosure of Morgan Stanley's potential and actual conflicts as to KKR.[156]

Brookfield is on-point. There, like here, Morgan Stanley had myriad buy-side dealings, including an undisclosed roughly half-a-billion-dollar investment with buy-side entities.[157] This Court held: "Morgan Stanley's nearly half a billion-dollar holding in Brookfield was material and would have been material to a stockholder in assessing Morgan Stanley's objectivity" because "'it is imperative for the stockholders to be able to understand what factors might influence the financial advisor's analytical efforts.'"[158] Moreover, here, as in *Brookfield*, the Proxy's "use of the word 'may' in addressing Morgan Stanley's holdings in [KKR] was [also] misleading…because Morgan Stanley had indeed already invested nearly half a billion dollars."[159]

The Trial Court acknowledged that: (i) the Proxy "did not disclose that, at the time Morgan Stanley advised the Special Committee on the Merger, Morgan Stanley held investments of approximately $200 million in KKR & Co. Inc. and $350 million

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[156] *Arnold v. Soc'y for Savs. Bancorp, Inc.*, 650 A.2d 1270, 1280 (Del 1994).
[157] *Brookfield*, 314 A.3d at 1132.
[158] *Id.* (quoting *RBC Cap. Mkts., LLC v. Jervis*, 129 A.3d 816, 860 (Del. 2015)).
[159] *Id.* at 1133; *see Inovalon*, 319 A.3d at 293 (finding proxy misleading because it used "may" to describe an advisor's interest in a counterparty); *EngageSmart*, 354 A.3d at 833 (same).

in KKR portfolio companies"[160]; and (ii) "[m]uch if not substantially all of those investments, Morgan Stanley appeared to hold for its own account[.]"[161] But the Trial Court distinguished *Brookfield* on the purported basis that "KKR was neither a controller nor a counterparty," and "[b]ecause the rollover posed a potential conflict, the Special Committee excluded KKR from its negotiations with Vista" and purportedly "maintained oversight of" KKR and Vista's rollover negotiations.[162] That holding ignores that KKR's $300M buy-side rollover rendered it a counterparty in the Merger. It also contravenes both: (i) Delaware law regarding the importance of disclosing even *potential* advisor conflicts,[163] and (ii) the Trial Court's own acknowledgment elsewhere in the Opinion that "[i]t is theoretically possible that holdings in a rollover stockholder standing alone would create a potential conflict of interest."[164]

Indeed, this Court held in *Brookfield* that advisor conflict information requires disclosure because it informs the effectiveness of the committee, which exists to

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[160] Op. 39.
[161] Op. 39 n.127.
[162] Op. 40-41.
[163] *Brookfield*, 314 A.3d at 1132 ("It does not matter whether the financial advisor's opinion was ultimately influenced by the conflict of interest; the presence of an undisclosed conflict is still significant: '[t]here is no rule ... that conflicts of interest must be disclosed only where there is evidence that the financial advisor's opinion was actually affected by the conflict.'") (quoting *In re John Q. Hammons Hotels Inc. S'holder Litig.*, 2009 WL 3165613, at *16 (Del. Ch. Oct. 2, 2009)).
[164] Op. 34; *see also supra* nn.122-25.

protect stockholders from interested party—not just acquiror—influence.[165] The Committee here was formed *because of the rollover*,[166] making it both illogical and factually inconsistent to ignore that same conflict in assessing committee advisor disclosures.[167]

The Trial Court further erred by (again) improperly saddling Plaintiffs with a pleading-stage burden to establish not just a material disclosure failure, but also an underlying process flaw. In finding no disclosure deficiency regarding Morgan Stanley's undisclosed KKR conflict, the Trial Court reasoned that "the Special Committee excluded KKR from its negotiations with Vista[,]" "KKR and Vista negotiated the amount of KKR's rollover, not KKR and the Special Committee (or Morgan Stanley)[,]" and "the Special Committee maintained oversight of those discussions…quarantin[ing] the Rollover Stockholders."[168] By rejecting Plaintiffs' disclosure claim based on a purported underlying lack of process deficiencies, the Trial Court again improperly conjoined the separate disclosure and process inquiries.[169]

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[165] *Brookfield*, 314 A.3d at 1132.
[166] *See, e.g.*, A0085(¶125).
[167] *See Ortsman v. Green*, 2007 WL 702475, at *1 (Del. Ch. Feb. 28, 2007) (finding proxy "deficien[t]" where it failed to disclose engagements and "fees paid to [advisors] in...recent transactions involving the members of the buyer group.").
[168] Op. 40-41.
[169] *See supra* at 26-28.

Amplifying that error, the Trial Court relied on *PLX Technology Inc. Stockholders Litigation*[170] in holding that: "[s]imilar to *Brookfield*, the central lesson of *PLX* is that an advisor possesses material conflicts when it has a close relationship with a counterparty. But KKR was not a counterparty. *And the Special Committee quarantined the Rollover Stockholders*."[171] However, *PLX* underscores the general proposition that an advisor's "position on both sides of the deal necessarily colors the court's assessment of the decisions that the directors made."[172] Here, KKR's buy-side rollover placed it squarely on "both sides of the [Merger],"[173] and thus adverse to the Committee.

3. The Proxy Omitted KKR's Dramatic Rollover Increase Upon Learning the Merger Price Would Be Unexpectedly Low

The Trial Court erroneously held the Proxy need not disclose that after learning the per-share Merger consideration would be lower than the Committee's pricing guidance, KKR dramatically increased the size of its rollover (rather than

[170] 2018 WL 5018535 (Del. Ch. Oct. 16, 2018).
[171] Op. 41 (emphasis added).
[172] *PLX*, 2018 WL 5018535 at *43.
[173] *Id.*

sell more at the unexpectedly low cash-out price).[174] That information directly informed the Merger's fairness, and thus required disclosure.[175]

The Proxy "'traveled down the road of partial disclosure"[176] by affirmatively raising the "potential quantum" of KKR's rollover multiple times,[177] thus "obligat[ing] [the Board] to provide the stockholders with an accurate, full and fair characterization of these historic events."[178] Yet the Proxy omitted the directly related and material fact that after learning the Merger price would be unexpectedly low, KKR essentially doubled its buy-side rollover.

Specifically, from July through mid-September 2022—when Morgan Stanley and the Committee projected a Merger price materially *above* $25 based on communicated pricing alignment from Vista[179]—KKR planned to roll over $150M-$200M in equity, and cash out the remainder.[180] But on September 16, Vista offered just $24 per share and warned it "would not be able to move significantly" from that

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[174] A0149-50(¶¶301-05).
[175] *See Gilmartin v. Adobe Res. Corp.*, 1992 WL 71510, at *10 (Del. Ch. Apr. 6, 1992) ("[I]t is axiomatic that the fairness of the consideration offered in a merger or tender offer is material to a shareholder considering whether to vote in favor of the transaction." (citing, *e.g.*, *Weinberger v. UOP, Inc.*, 457 A.2d 701 (Del. 1983)).
[176] *Zirn*, 681 A.2d at 1056 (quoting *Arnold*, 650 A.2d at 1280).
[177] A0301.
[178] *Zirn*, 681 A.2d at 1056 (quoting *Arnold*, 650 A.2d at 1280).
[179] A0112(¶196) (Morgan Stanley stating in August 2022 "$25 to $26 will 'need some work' (*i.e.*, need to be increased)"); A0124(¶234) (same in September 2022).
[180] A0099(¶160), A0123(¶232).

offer.[181] Immediately thereafter, KKR decided to reevaluate its rollover amount.[182] And in late September, when Morgan Stanley alerted KKR to further negotiations indicating a sub-$25 Merger price, KKR responded that it would increase its rollover amount.[183] Immediately after the Committee agreed to $24.90 per share, KKR confirmed a $300M rollover—roughly 46% of its total KnowBe4 equity, and 50-100% *higher* than the $150M-200M it planned when expecting a materially *higher* Merger price.[184]

Those well-pled facts create a pleading-stage inference that KKR drastically increased its rollover—and thus drastically reduced its cashed-out shares—because it deemed the $24.90 Merger consideration unduly low. The Proxy's omission of that dramatic rollover increase is material under Delaware law, which requires disclosure of facts informing the fairness of transaction consideration.[185] At minimum, having raised the "potential quantum" of KKR's rollover multiple times in the Proxy,[186] it was materially misleading to omit that KKR significantly increased that "quantum" after the Merger price fell below its expectations.

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[181] A0127(¶240).
[182] A0130(¶251).
[183] A0134(¶260).
[184] A0150(¶304).
[185] *Gilmartin*, 1992 WL 71510, at *10; *Eisenberg*, 537 A.2d at 1059 (holding "[s]hareholders are entitled to be informed of information in the fiduciaries' possession that is material to the fairness of the price.").
[186] A0301.

The Trial Court erroneously excused that disclosure failure on the basis that the Proxy (i) "disclosed in detail the negotiating process that led to KKR's *final* rollover amount," including that Vista requested and received KKR's estimated rollover amount before submitting an offer; and (ii) "disclosed the *final* rollover amount and attached a copy of KKR's rollover agreement."[187] Those observations ignore the fundamental issue: the material information was the increase itself, which the Proxy concealed by omitting, *e.g.*, KKR's *initial* rollover amount. Under the partial disclosure doctrine, disclosing KKR's *final* rollover amount—and parallel Merger price negotiations leading to that final amount—made the failure to disclose the rollover increase *more* problematic, not less.

The Trial Court also erred in excusing the disclosure failure on the basis that "KKR's earlier, estimated rollover amounts were contingent on other factors that changed throughout the negotiations," and "'the price Vista would pay in any transaction could affect the amount of equity Vista asked investors to roll over.'"[188] As well-pled in the Complaint[189] (and argued below[190]), Vista's decision to offer a cash-out price considerably below the Committee's pricing guidance (which KKR had been apprised of) was the key "factor[] that changed throughout the

[187] Op. 42 (emphasis added).
[188] Op. 42-43 (quoting Am. Compl. ¶237).
[189] *See, e.g.*, A0046-47(¶¶10-11), A0150(¶304).
[190] *See, e.g.*, A1379-82.

negotiations" and impacted KKR's "rollover amount[.]"[191] The inverse correlation between expected Merger price and KKR's rollover amount makes KKR's significant rollover increase patently material.

Materiality is judged from the perspective of the "reasonable investor,"[192] and any reasonable stockholder would want to know that KnowBe4's second-largest stockholder—a sophisticated private equity firm with longstanding investment interest—increased its rollover after learning the Merger price fell below the previously-conveyed pricing guidance. The Trial Court erred by disregarding the pleading-stage inference that, consistent with economic rationality and the well-pled facts, KKR dramatically increased its rollover *because* the unexpectedly low Merger consideration made the buy-side of the Merger more appealing.

Finally, in excusing the failure to disclose KKR's rollover increase, the Trial Court erroneously relied on two plainly distinguishable decisions.[193]

In *Adolf*, the relevant disclosure was the third subpart of the plaintiffs' seventh (of eight) alleged disclosure failures,[194] and alleged a failure to disclose that "CD&R

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[191] Op. 42-43 (quoting Am. Compl. ¶237).
[192] *Morrison*, 191 A.3d at 283.
[193] Op. 43, n.140 (citing *Adolf*, 2025 WL 1000153, at *25; *City of Sarasota Firefighters' Pension Fund v. Inovalon Hldgs., Inc.*, C.A. No. 2022-0698-KSJM, Tr. at 44:21–45:5 (Del. Ch. July 31, 2023) (TRANSCRIPT) ("*Inovalon* Tr."), *rev'd on other grounds*, 319 A.3d 271 (Del. 2024).
[194] The first subpart alleged a failure to disclose that "CD&R [*i.e.*, the buyer] expected a material rollover from management." *Adolf*, 2025 WL 1000153, at *24.

insisted on [large stockholder] Stone Point's equity rollover."[195] It therefore had nothing to do with the quantum—let alone any *change* in quantum—of the rollover. The *Adolf* Court found that alleged omission immaterial because: (i) "the minutes only state that CD&R would require 'a partner' to close a deal, not that the partner would have to be Stone Point"; and (ii) the proxy already contained multiple disclosures that CD&R wanted Stone Point to roll over shares, and would increase its bid if Stone Point did so.[196] Thus, both the alleged disclosure failure and rationale for rejecting are inapposite.

In *Inovalon*, the relevant alleged disclosure failure was that the controller "believed [the company] to be worth more than $44 per share."[197] That argument rested not on any changed rollover amount—let alone, as here, in response to a changed cashout price—but instead solely on minutes stating the controller "was prepared to set [his] rollover at $700 million at $44 per share [*i.e.*, the per-share price offered by the acquiror]."[198] The *Inovalon* Court held that the controller's

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The second subpart—*i.e.*, "CD&R stated it would be an 'outstanding partner' to management"— was unrelated to the rollover. *Id.*

[195] *Id.*

[196] *Id.* at *24-25.

[197] *Inovalon* Tr. 44:14-20.

[198] *Id.* at 44:21-24.

identification of a rollover amount assuming the acquiror's *actual bid* "says nothing about [the controller's] purported belief about Inovalon's value…."[199]

[199] *Id.* at 45:1-5.

II. ELEPHANT, KKR AND SJOUWERMAN CONSTITUTED A CONTROL GROUP

A. Question Presented

Whether the Trial Court erred in finding it was not reasonably conceivable that Elephant, KKR, and Sjouwerman constituted a control group in connection with the Merger. The question was raised below[200] and considered by the Trial Court.[201]

B. Scope of Review

This Court reviews pleading-stage control group findings *de novo*.[202]

C. Merits of Argument

The Trial Court erroneously rejected a pleading-stage inference that Elephant, KKR, and Sjouwerman—who, as stated by the Committee, "controlled a majority of the Company's voting power and, therefore, the Company would not be able to consummate a Potential Transaction without their consent"[203]—were a control group.[204] That ruling relies on impermissible defense-friendly inferences and contradicts multiple precedents without acknowledgement or explanation.

In *Sheldon v. Pinto Technology Ventures, L.P.*, this Court explained that a control group exists where holders of majority voting power "are connected in some

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[200] A1316-A1338.
[201] Op. 20-30.
[202] *Sheldon v. Pinto Tech. Ventures, L.P.*, 220 A.3d 245, 251 (Del. 2019).
[203] A0106(¶179), A0107(¶183).
[204] *See, e.g.*, Op. 1.

legally significant way—such as by contract, common ownership, agreement, or other arrangement—to work together toward a shared goal."[205]

Courts "evaluate[] control-group allegations holistically, asking whether the collection of alleged contacts supports an inference of a legally significant connection."[206] "[V]oting power, concurrence of interests, historical ties, and transaction-specific coordination" can "give rise to a reasonably conceivable inference that [an] alleged group had more than a mere concurrence of self-interest and the actual agreement to work together in connection with the [transaction]."[207] "'[P]arallel interests, in addition to other facts alleged by [plaintiffs],' can support a reasonable…inference that a control group existed."[208]

Here, the Rollover Group members: (i) concurrently entered written agreements by which they rolled over stock, down-converted shares, and voted for the Merger; (ii) actively and/or jointly participated in discussions regarding the Merger both before and during the Merger process; and (iii) were

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[205] 220 A.3d at 251-52 (citation modified) (quoting *Crimson Expl. Inc. S'holder Litig.*, 2014 WL 5449419, at *15 (Del. Ch. Oct. 24, 2014)).
[206] Op. 23 (citing *Berteau v. Glazek*, 2021 WL 2711678, at *27 (Del. Ch. June 30, 2021)).
[207] *Garfield v. BlackRock Mortg. Ventures, LLC*, 2019 WL 7168004, at *10 (Del. Ch. Dec. 20, 2019) (citation modified). Historical connections are not necessary to establish a control group. *See, e.g.*, *Frank v. Elgamal*, 2012 WL 1096090, at *8 (Del. Ch. Mar. 30, 2012) (finding control group without considering historical ties).
[208] *In re Hansen Med., Inc. S'holder Litig.*, 2018 WL 3025525, at *6 (Del. Ch. June 18, 2018).

contemporaneously recognized and treated as controllers by the Merger process participants.

First, the Rollover Group members concurrently entered into Support Agreements pursuant to which they rolled over stock, down-converted Class B shares to deliver the Class A Merger vote under the Charter's Equal Protection Provision, and voted for the Merger.[209]

Those facts alone establish a control group. The closest precedent, *Frank*, found that four executives collectively holding majority voting power "were connected in a legally significant way" and thus constituted a control group based solely on their: (i) concurrent entry into separate voting agreements; (ii) concurrent entry into separate partial rollover agreements; and (iii) agreement to continue serving as executives.[210]

The first two *Frank* factors (*i.e.*, support and rollover agreements) are present here, and *Frank*'s executive employment agreements are far less suggestive of control group coordination than the down-convert agreements here.[211] Without explanation, the Trial Court functionally rejected *Frank*, stating "a decision to roll

[209] A0043(¶1), A0135(¶263).
[210] 2012 WL 1096090, at *6, *8; *Hansen*, 2018 WL 3025525, at *6 (discussing *Frank*'s holding).
[211] *See Hansen*, 2018 WL 3025525, at *8 (recognizing that employment agreements were not essential to *Frank*'s control group holding).

over is a quintessential example of parallel economic interests" while the support and down-convert decisions "reflect no more than 'an alignment of interests[.]'"[212] The Trial Court also erroneously cited *Adolf* in which, *e.g.*, only one putative control group member (a 20% holder) entered a rollover agreement.[213] The *Adolf* Court also noted that the control group inference was "less reasonable" given concurrent allegations that the 20% holder "[wa]s a controller all on its own," and that the other purported control group members "[we]re merely glommed on to the party that Plaintiffs propose is the real controller."[214]

In addition to the coordinated entry into the rollover, support, and down-convert agreements, Plaintiffs allege many other facts absent from *Frank*—and *Hansen*, which also found a control group based partially on rollover and support agreements—further evidencing joint pursuit of a shared goal. Those facts include (i) secretly meeting for weeks with one another and/or Vista to discuss a potential merger before informing the Board; (ii) disclosing their potential rollover participation at the (subsequent) initial Board meeting to discuss the Merger; and (iii) discussing the Merger with the Committee (whose advisor—Morgan Stanley—

[212] Op. 25-27.
[213] *See* Op. 25 (discussing *Adolf*).
[214] 2025 WL 1000153, at *19.

acknowledged that their rollovers "may impact the pricing for the [Merger]"), and Vista (which premised Merger bids on communications with the Rollover Group).[215]

The Merger participants also viewed and treated the Rollover Group members as KnowBe4's controllers. For example: (i) as the Trial Court acknowledged, "Morgan Stanley treated the alleged group members as a control group[;]"[216] (ii) the Committee kept Elephant and KKR apprised of the Committee's progress and obtained their feedback because they "collectively owned" majority voting power and KnowBe4 "would not be able to consummate a Potential Transaction without their consent[;]"[217] (iii) the Committee and its advisors repeatedly discussed Delaware's controlling stockholder legal framework (*e.g.*, *MFW*);[218] and (iv) Vista and the Board each conditioned the Merger on *MFW* compliance.[219]

The Trial Court's dismissal of those facts contravenes other authorities and/or improperly draws Defendant-friendly inferences.

First, the Trial Court relied on the Rollover Group members signing technically separate agreements.[220] The Trial Court thereby ignored that the control

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[215] A0075-77(¶¶95-103), A0103(¶173), A0106-07(¶¶179,183), A0122 (¶227), A0127(¶240), A0132-33(¶256).
[216] Op. 28.
[217] A0102(¶168), A0106(¶179); A0296; A1423.
[218] A0093(¶144), A0102(¶168); A0690; A0712-13; A0296, A0298.
[219] A0085-87(¶¶124-27).
[220] Op. 27.

group members in *Frank* and *Hansen* signed separate agreements, and the Court in *Hansen* confirmed that technically separate agreements can "evidence an agreement between the [control group members]."[221] The Trial Court's contrary holding invites control group members to evade a control finding merely by signing separate contracts.

Second, without acknowledgment, the Trial Court again contradicted *Frank* and *Hansen*—which cited the concurrent timing of analogous agreements as evidencing control groups—by rejecting the concurrent timing of the rollover, down-conversion and voting agreements as indicative of a control group.[222] The Trial Court's reasoning that "[t]he 'concurrent' timing of a decision to roll over is typically driven by the deal itself" ignores that rollover participation was baked into Vista's offers, rather than typical rollovers secured *after* price negotiations as an acquiror seeks deal financing.

Third, the Trial Court drew a defendant-friendly inference by concluding there was no "coordinated strategy" between Elephant and KKR regarding the rollover amounts.[223] The fact that Elephant and KKR each rolled over exactly 46% of their KnowBe4 shares supports coordination at this stage.[224] Regardless, requiring

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[221] *See Hansen*, 2018 WL 3025525, at *8.
[222] *Id.* at *6-7.
[223] *See* Op. 25-26.
[224] A1221. Similarly, Sjouwerman rolled over 49%. *See id.*

perfectly lockstep conduct amongst control group members far exceeds both *Sheldon*'s "legally significant connection" standard and Delaware's pleading standards, is unsupported by precedent, and is inconsistent with cases finding adequately-pled control groups.[225] Moreover, Elephant's, KKR's, and Sjouwerman's down-convert decisions to diminish their voting power only make sense as a singular control group acting in concert.

Fourth, the Trial Court's requirement that Plaintiffs demonstrate the Rollover Group members acted in perfect "'unison'" goes beyond *Sheldon*, is easily manipulated to avoid a control group finding, and is without precedent. The Trial Court misattributed the "unison" requirement to *van der Fluit v. Yates*, but that case involved allegations of a *general*—rather than transaction-specific—control group, and merely observed that the co-founders did not generally operate the company "in unison."[226]

Fifth, the Trial Court gave no weight to the transaction participants' uniform treatment of the Rollover Group members as controllers, a fact evidencing control

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[225] *E.g.*, *Garfield*, 2019 WL 7168004, at *10 (finding general interest in maximizing overall transaction benefits sufficient to support reasonable inference of control group despite misalignment on tax issues); *Frank*, 2012 WL 1096090, *8 (finding control group adequately plead without consideration of coordination of strategy); *Hansen*, 2018 WL 3025525, at *6, *8 (explaining mere "parallel interests" can support control group inference and rejecting defendants' "alternative explanation for each fact pled by Plaintiffs").

[226] *See* 2017 WL 5953514, at *6 (Del. Ch. Nov. 30, 2017).

in *Garfield*.[227] The Trial Court instead drew—without citing any record support—the defense-friendly inference that those actions were merely "prophylactic procedures[.]"[228] Nor did the Trial Court attempt to square its reasoning with the contrary ruling in *MH Haberkorn* that "excluding the alleged control group from the majority-of-the-minority vote supported an inference that they were a control group."[229]

Instead, the Trial Court rejected the Merger participants' contemporaneous recognition of a control group on the basis that Delaware seeks to incentivize procedural protections.[230] That rationale unrealistically presumes that future parties advised by thoughtful counsel would brazenly forgo appropriate procedural safeguards in favor of rolling the dice on the Court failing to recognize the conditions triggering a heightened review standard.

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[227] 2019 WL 7168004, at *10.
[228] Op. 28.
[229] Op. 30 (citing *MH Haberkorn 2006 Tr. v. Empire Resorts, Inc.*, C.A. No. 2020-0619-KSJM (Del. Ch. July 23, 2021) (TRANSCRIPT)).
[230] Op. 28.

CONCLUSION

This Court should reverse.

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