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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 SPVA, 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 - SEPTEMBER 24, 2026**

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NATURE OF PROCEEDINGS[1]

The holders of 99% of KnowBe4's unaffiliated shares voted to approve Vista's acquisition of KnowBe4. Vista was the ***only*** company to bid on KnowBe4. Vista's ultimate offer represented a ***44% premium*** over the company's unaffected stock price.

In the face of this clear benefit to stockholders, Plaintiffs challenged the deal process. But as the Court of Chancery correctly recognized, "[t]his was a clean process." MTD Op. 35.

Indeed, KnowBe4's Board of Directors (the "Board") empowered an independent Special Committee, which met 23 times over five months, and hired experienced and independent advisors who reached out to 17 potential bidders. Then, even though no other bidder so much as accessed KnowBe4's data room, the Special Committee was still able to push Vista on price. Over two weeks, the Special Committee countered Vista three separate times, ultimately extracting nearly an extra dollar per share for stockholders. The Special Committee members undisputedly had a strong financial incentive to maximize the deal price, and they succeeded in doing so.

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[1] Citations to "MTD Op. __" or "Motion to Dismiss Opinion" refer to the Court of Chancery's motion to dismiss ruling. *Le Clair v. KnowBe4, Inc.*, 2026 WL 1481979 (Del. Ch. May 27, 2026), which is attached as Exhibit A to Appellant's Opening Brief "OB").

The Court of Chancery correctly held that Plaintiffs' breach of fiduciary duty claims are defeated by *Corwin v. KKR Financial Hldgs. LLC*, 125 A.3d 304, 307-12 (Del. 2015). Plaintiffs challenge the application of *Corwin* based on alleged disclosure deficiencies in the Proxy and the existence of a supposed control group. Both arguments fail as a matter of well-established law.

Plaintiffs' lead disclosure argument rests on the mistaken premise that, when a Proxy discloses a director as independent, any alleged "potential" conflict of that director must be disclosed. This position conflicts with Delaware precedent that a plaintiff alleging misleading independence disclosures must plead sufficient facts to rebut the presumption of director independence. Plaintiffs fail to do so here. Almost all of the alleged non-disclosures concern supposed conflicts between Special Committee members and KKR and Elephant, which are both minority stockholders that were walled from the price negotiations between Vista and the Special Committee. Plaintiffs' position thus would rewrite Delaware law to require disclosures for seemingly any connection to any minority stockholder that might rollover some shares. That is not the law, and it is completely infeasible.

The particular alleged potential conflicts here only highlight the problem with Plaintiffs' proposed change in law. Plaintiffs demand disclosure of the connections that Special Committee members supposedly have with KKR and Elephant, but miss the relevant inquiry entirely: Plaintiffs provide no explanation for how connections

to minority shareholders, KKR and Elephant, could conceivably affect the Special Committee members' independence in its negotiations ***against Vista***. Plaintiffs do not and cannot allege that Special Committee members' isolated prior dealings with KKR and Elephant on unrelated matters actually undermined Special Committee members' incentive to maximize the deal price in negotiations ***with Vista***. Nor do they allege any scenario in which KKR and Elephant would have been better off with a lower Merger price—each were ***net sellers*** in the Meger seeking to maximize deal price. Accordingly, there is no reasonably conceivable basis to believe that a reasonable stockholder would find this information material.

Likewise, Plaintiffs' theory that the Proxy had to disclose the amount of Morgan Stanley's investments in all KKR funds and portfolio companies is baseless. Even putting aside that this amount includes Morgan Stanley's clients' investments, Plaintiffs ask this Court to hold—for the first time—that a Proxy must disclose investments a financial advisor has in a non-controlling, minority stockholder. Plaintiffs provide no support for such a rule. Nor do Plaintiffs address the undisputed fact that Morgan Stanley had no role in determining the amount of the KKR rollover, nor how Morgan Stanely could have tilted Merger negotiations to favor KKR over other similarly situated minority stockholders.

Plaintiffs' last non-disclosure argument, concerning the KKR rollover, ignores the Proxy's extensive disclosures regarding the rollover. Plaintiffs assert

that the Proxy had to disclose expressly that the rollover amount increased from the alleged preliminary estimate, but this position conflicts with settled law. Moreover, a requirement to disclose preliminary estimates would be especially unwarranted here, given that the rollover estimate came two months before Vista made its opening bid (or any price negotiations at all) and before KKR even constructed a valuation model. Regardless, the Proxy affirmatively disclosed that the rollover amount was fluid during Merger negotiations, that KKR might roll over "***all or a part of***" its equity stake, and that such rollover always depended on final deal terms.

As there was no control group here, *see* Elephant Defendants' Answering Brief, filed in this appeal, *Corwin* applied and the Court of Chancery correctly dismissed the Amended Complaint.

SUMMARY OF ARGUMENT

1. Denied. The Court of Chancery correctly held that the Proxy fully disclosed all material information, and thus *Corwin* applies and warrants dismissal of the Amended Complaint. Plaintiffs focus almost entirely on alleged non-disclosures about relationships between the Special Committee and Morgan Stanley, on one hand, and KKR and Elephant, on the other, but the latter are not the counterparties in the Merger, but rather minority stockholders. Plaintiffs cite no precedent requiring disclosure of unrelated transactions with minority stockholders, nor do they provide any reason why reasonable stockholders would find such details material when evaluating the Merger *with Vista* in this case.

2. Denied. As detailed in the Elephant Defendants' brief, the Amended Complaint fails to plead the existence of a control group. Instead, at most, Plaintiffs allege that Elephant, KKR, and Sjouwerman independently pursued their individual economic incentives.[2]

[2] Defendants Sjoerd Sjouwerman and KnowBe4, Inc. fully join the arguments in the Elephant Defendants' Answering Brief.

STATEMENT OF FACTS

A. Sjoerd Sjouwerman Founds KnowBe4, In Which Elephant, KKR, and Vista Independently Invest

KnowBe4 is a Delaware corporation that provides cybersecurity awareness training to organizations across the world. A0048. Sjoerd Sjouwerman founded KnowBe4 in 2010. A0060. At the time of the Merger, KnowBe4 had two classes of stock, Class A shares (publicly traded with one vote per share) and Class B shares (never publicly traded with 10 votes per share). A0067-68. KnowBe4's charter contained an "Equal Treatment Provision" that required Class A and Class B shares to be sold for the same consideration in a merger unless disparate treatment were approved by a majority of each class voting separately. A0068.

An investment fund affiliated with Elephant acquired KnowBe4 shares from 2016 through 2020. A0062-65. At the time of the Merger, Elephant owned zero Class A shares and 36.4% of KnowBe4's Class B shares, giving it control of 33.9% of KnowBe4's voting power. A0057-58. Elephant appointed Jeremiah Daly to the KnowBe4 Board. A0049.

An investment fund managed by KKR & Co. Inc.'s investment manager (together with its affiliates, "KKR") invested in KnowBe4 from 2019 through 2020. A0063-65. At the time of the take-private, KKR owned 9.1% of KnowBe4's Class A shares and 31.6% of its Class B shares, representing 26.4% of KnowBe4's voting power. A0057. KKR appointed Stephen Shanley to the KnowBe4 Board. A0049.

Vista first expressed interest in acquiring KnowBe4 in 2020. A0065. After preliminary talks, Vista declined to pursue an acquisition and instead opted to acquire a minority interest directly from KKR and another investor. A0066-67. In total, Vista controlled roughly 2.8% of KnowBe4's voting power at the time of the take-private and did not have any Board representation. A0058. At that time, Sjouwerman controlled 4.0% of KnowBe4's voting power and served as KnowBe4's CEO and a member of the Board. A0048-49.

Apart from Sjouwerman, Daly, and Shanley, KnowBe4's Board had four other members:

- Kevin Klausmeyer was appointed to the KnowBe4 Board in August 2020. A0049. Klausmeyer also served on the board of Jamf Holdings Corp., a Vista portfolio company, and Ivalua Inc., a company in which KKR held a minority investment. A0051. Klausmeyer's service on both boards was disclosed in the Proxy. A0391.

- Shrikrishna Venkataraman was appointed to the KnowBe4 Board in March 2022. A0052. Before joining the Board, Venkataraman served as KnowBe4's Co-President and CFO. *Id.*

- Gerhard Watzinger was appointed to the KnowBe4 Board in October 2019. A0054.

- Kara Wilson is a Senior Advisor to KKR who was appointed to the KnowBe4 Board in October 2019. A0056.

B. KnowBe4 Pursues A Sale And Empowers An Independent Special Committee

In May and June 2022, Vista held separate meetings with Board members Shanley, Daly, and Sjouwerman as part of its regular oversight of its portfolio

investments. A0075-76; A0291; MTD Op. 5. During those meetings, Vista separately asked Shanley and Daly whether KKR and Elephant would have interest in a potential sale of KnowBe4. *Id*. Following a June 22 meeting with Vista and Sjouwerman, Daly informed KnowBe4's outside counsel at Wilson Sonsini of his discussions with Vista. A0292; MTD Op. 6.

The full KnowBe4 Board met on June 28 to discuss Vista's outreach. A00292. During that meeting, Shanley, Daly, and Sjouwerman each informed the Board that no substantive deal terms had been discussed during their respective meetings with Vista. A0078; MTD Op. 6. The Board then discussed potential conflicts of interest that might arise if KnowBe4 were sold to Vista. A0292; MTD Op. 6. As part of that discussion, Daly and Shanley informed the Board that Elephant and KKR would consider rolling over some or all of their KnowBe4 stock in any sale, and Sjouwerman disclosed that he and other members of management also would consider a rollover. A0077; A0687.

The Board then discussed the formation of a Special Committee to negotiate and approve any sale of KnowBe4. A0078. Following this discussion, the Board instructed Wilson Sonsini to gather "information regarding the various Board members and any actual, potential or perceived conflicts" so that Wilson Sonsini could provide the Board with guidance regarding which members were best suited

to serve on any Special Committee. *Id.* The Board agreed to "reconvene once Wilson Sonsini 'compiled such information and recommendations.'" *Id.*

The Board next met on July 5 to discuss the formation of a Special Committee. A0078; A0292. Following that meeting, the Board determined that Watzinger, Klausmeyer, and Venkataraman were independent and thus should be appointed to the Special Committee. A0079; A0292. After that meeting, the Special Committee met and decided to contact Morgan Stanley and Potter Anderson to discuss their potential retention as independent financial and legal advisors to the Special Committee. A0082; A0292. On July 7, the Special Committee heard presentations from both firms and determined that each should be retained. A0083; A0293.

C. The Special Committee Broadly Canvasses The Market, But Only Vista Expresses Interest

On July 11, 2022, the Board executed a Unanimous Written Consent that formally set forth the Special Committee's scope of authority. A0085; A0293. Specifically, the Special Committee was empowered to "consider and evaluate the advisability of" both a "Strategic Transaction" and a "Specified Strategic Transaction" (such as the Merger, "or any alternative thereto and any related transaction") and "recommend, reject or approve" any such transaction. A0696-700; *see also* A0190; A0219. The Special Committee was free to select its own advisors, and approval of any Specified Strategic Transaction would require approval of both

the Special Committee and the holders of a majority of KnowBe4's disinterested shares. *Id.*

On July 14, the Special Committee met and discussed the possibility that Vista would ask certain KnowBe4 stockholders "to roll some or all of their equity[.]" A0711; *see also* A0191. The Special Committee then requested that Morgan Stanley inform Vista that any deal would be conditioned on *MFW*'s dual protections. A0294.

The Special Committee met on July 18. A0191; A0295. During that meeting, Potter Anderson reported that KKR was interested in rolling over some or all of its shares in any potential acquisition. A0095-97. Morgan Stanley then identified the four financial sponsors who "were the most likely to engage in, and complete, an acquisition of KnowBe4." A0191; A0295. The Special Committee authorized Morgan Stanley to contact those sponsors, as well as to discuss with KKR whether KKR would be interested in acquiring KnowBe4. A0098-99; A0295. KKR responded by confirming that it would only be interested in a rollover, not an acquisition. A0296; A0099.

The next week, the Special Committee was advised that Vista was the only potential bidder actively engaging in diligence, with only one other potential bidder having even expressed interest in signing a non-disclosure agreement. A0100; A0726.

On July 28, the Special Committee met to consider Elephant and KKR's role in any transaction. A0100-101; A0296. The Special Committee determined that Potter Anderson should provide periodic updates of the sale process to KKR's and Elephant's respective counsel, but that KKR and Elephant should not have any substantive role in the sale process. MTD Op. 10; *see also* A0102; A0296-97. The Special Committee then authorized Morgan Stanley to conduct outreach to a larger group of potential bidders. A0103; A0297.

The sale process continued, and on August 19, the Special Committee met and decided to "convey [its] views on valuation to Vista" because "it would not make sense to proceed further with Vista unless Vista was prepared to submit a proposal at a price that the Special Committee found attractive." A0299; A0113. After deliberating, the Special Committee authorized Morgan Stanley to convey to Vista that the "mid-to-high $20s" was "the right zone" for a potential transaction. A0112-13; *see also* A0299. Vista responded a week later that it was interested in continuing diligence but was not yet ready to discuss pricing. A0115; A0300.

The Special Committee met on August 26 to discuss the sale process. A0115. During that meeting, Morgan Stanley informed the Special Committee "that no other potential bidder to date had expressed as much interest, or had been as active as Vista, with respect to a Potential Transaction." A0772. On September 2, the Special Committee met and Morgan Stanley reported that Vista had received access to

KnowBe4's data room, and that Vista "expected to have completed the vast majority of its typical due diligence by September 9, 2022." A0195; A0785.

By September 8, only two non-Vista potential bidders remained in the process. A0121. The Special Committee discussed expediting diligence for these potential bidders, but Morgan Stanley advised against doing so because "one of these potential bidders had not been actively engaged in due diligence" and was "exploring other opportunities," and because Vista's expected opening bid would be made publicly available on a Schedule 13D, which would initiate a public bidding process. A0802.

Between September 9 and September 13, Morgan Stanley (at the Special Committee's direction) contacted Sjouwerman, Shanley, and Daly to discuss Sjouwerman, KKR, and Elephant's potential rollovers. A0122-23; A0196; A0908. Sjouwerman stated he was willing to rollover roughly half of his holdings. A0123. Shanley stated KKR would be selling its holdings but would reinvest at least $200 million post-sale through a different fund. *Id.* Daly stated that Elephant would cash out just over half of its holdings and rollover the remainder. *Id*. In a subsequent meeting, Morgan Stanley informed the Special Committee "that it had contacted the most likely bidders for a Potential Transaction." A0818; *see also* A0124-25.

D. Vista Bids $24.90 Per Share, And No Topping Bidder Emerges In The Weeks That Follow

On September 16, 2022, Vista informed Morgan Stanley that it would be submitting an initial bid for KnowBe4 of $24 per share. A0127; A0302. Vista said

it was open to "certain of KnowBe4's significant stockholders" rolling over their shares but would expect that any transaction involving such a rollover to follow *MFW*. *Id.* Shortly thereafter, Vista submitted a formal written offer. A0302. The next day, "Vista provided Morgan Stanley with a list of debt and equity financing sources and requested the Committee's approval to contact Elephant, KKR, and Sjouwerman regarding their rollover." A0127; *see also* A0302.

The Special Committee met and decided to counter Vista's offer at $26.50 per share. *Id*. The Special Committee then authorized Vista, with Morgan Stanley's oversight, to discuss a potential equity rollover with KKR and Elephant. A0130; A0303. The Special Committee did not authorize those parties to discuss pricing. A0303.

On September 19, Vista publicly disclosed its $24-per-share bid through a Schedule 13D filing. A0130-31; A0303. This was a premium of 38% to KnowBe4's 90-day volume weighted average share price. A0866.

On September 28, following the Special Committee counteroffer at $26.50, Vista raised its bid to $24.60 per share. A0304. Vista noted this bid was conditioned on Elephant, KKR, and Sjouwerman rolling over at least $675 million in KnowBe4 stock. A0132-33; A0304. The Special Committee countered again, this time at $25.75 per share, and instructed Morgan Stanley to inform Vista that Vista was to bid "as far into the $25.00s as Vista could go." A0133; A0305.

Vista countered later that day at $24.80 per share. A0135; A0305. It further stated that it "would not be in a position to submit a proposal at a price of $25.00 per share or above." *Id.* The Special Committee responded with a $24.90 counteroffer, and Vista accepted. A0135-36; A0305. Vista's offer was contingent upon rollover of $682 million of KnowBe4 stock. *Id*.

On October 2, the Special Committee met to discuss the sale process. A0306. Morgan Stanley noted at that meeting that, even though Vista's initial bid had been public for nearly two weeks, Morgan Stanley "had not received, and was not otherwise aware of, any inbound interest from a potential third party who was interested in acquiring KnowBe4." *Id*. Morgan Stanley also reported it had reached out to previously contacted bidders, but that each of them "had either not responded to Morgan Stanley's outreach or had confirmed that they were not interested." *Id*. In total, the Special Committee, through Morgan Stanley, contacted sixteen potential bidders (excluding Vista). A0305-06; A0777. Nine potential bidders executed NDAs and eight had preliminary meetings with management, but only two went so far as submitting diligence requests. *Id.* Only Vista ever bid. *Id.* Indeed, no non-Vista party even sought access to KnowBe4's data room. *Id.*

On October 11, Morgan Stanley provided its fairness opinion, and the Special Committee recommended Vista's offer to the full Board. A0139. The full Board unanimously approved the Merger. A0140.

The Merger was publicly announced on October 12, 2022, nearly a month after Vista's initial bid was made public and without any other incoming bids. A0308. KnowBe4 filed its proxy on December 22, 2022, and filed an amended proxy in January 2023. A0882. The stockholder vote was held on January 31, 2023, and the Merger was approved with near-unanimous support: 99.8% of the non-abstaining majority vote, 99.0% of the non-abstaining unaffiliated stockholder vote, 98.9% of the Class A vote, and 100% of the Class B vote were cast in favor of the transaction. *Id*.[3] The Merger closed on February 1, 2023 at a price that was a 44% premium over the Company's unaffected stock price. A0310.

E. Plaintiffs Sue And The Court Of Chancery Dismisses The Verified Amended Class Action Complaint

Plaintiffs filed their initial complaint on November 7, 2024 and filed the Amended Complaint on March 10, 2025. The Amended Complaint alleges that KKR, Elephant, and Sjouwerman comprised a control group, and that each Defendant breached their fiduciary duties by agreeing to an unfair Merger. MTD Op. 18.[4]

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[3] The Class A and B votes were held under the Charter's Equal Treatment Provision, while the unaffiliated stockholder vote was held to comply with *MFW*'s protections.

[4] Plaintiffs also brought a claim for breach of the KnowBe4 Charter, but they abandoned that claim. MTD Op. 18.

Defendants moved to dismiss, arguing that KKR, Elephant, and Sjouwerman were not a control group, and thus dismissal was required under *Corwin* because the Proxy fully disclosed all material facts. In the alternative, Defendants argued that, even if there were a control group, the Merger had complied with *MFW*'s dual requirements.

On May 27, 2026, the Court of Chancery granted Defendants' motion in full. The court found that Plaintiffs had not sufficiently alleged the existence of a control group and that Plaintiffs had failed to plead any disclosure deficiency sufficient to defeat *Corwin*. MTD Op. 20-47. The court addressed each of Plaintiffs' five alleged disclosure deficiencies: the Special Committee's alleged conflicts, Morgan Stanley's investments in KKR, KKR's rollover estimate, KnowBe4 employee Kevin Mitnick's decision to support the merger, and the Special Committee's alleged "favoritism" of Vista. MTD Op. 31-47. The court found that each alleged disclosure deficiency was not material and did not defeat the application of *Corwin*. As to the control group issue, the court found that Plaintiffs failed to adequately allege that the rollover stockholders formed a control group with respect to the Merger. MTD Op. 20-28.

On June 25, 2026, Plaintiffs filed their notice of appeal. Plaintiffs filed their opening brief on August 10, 2026.

ARGUMENT

I. THE COURT OF CHANCERY PROPERLY DISMISSED THE AMENDED COMPLAINT UNDER *CORWIN*

A. Question Presented

Did the Court of Chancery correctly find that Plaintiffs had not adequately alleged any disclosure deficiency, and thus the business judgment rule applied under *Corwin*?

B. Scope Of Review

"This Court reviews *de novo* the grant of a motion to dismiss under Court of Chancery Rule 12(b)(6), to determine whether the trial judge erred as a matter of law in formulating or applying legal precepts." *Nemec v. Shrader*, 991 A.2d 1120, 1125 (Del. 2010) (quotation omitted).

C. Merits Of Argument

Plaintiffs do not dispute—either in the Court of Chancery or on appeal—that if *Corwin* applies, the case should be dismissed. Under *Corwin*, the business judgment rule is the appropriate standard of review where (i) there is no controlling stockholder or "control group" and (ii) the merger was approved by the holders of a fully informed, uncoerced majority of disinterested shares. *Corwin*, 125 A.3d at 307-12. Both elements are satisfied here. KnowBe4 did not have a controlling stockholder and the absence of a control group is discussed in the Elephant Defendants' Brief.

As to the second, Plaintiffs fail to allege that KnowBe4's disclosures contained material omissions or were materially misleading. A fact is material "if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote." *Rosenblatt v. Getty Oil Co.*, 493 A.2d 929, 944 (Del. 1985) (internal citation omitted). "Omitted facts are not material simply because they might be helpful." *Skeen v. Jo-Ann Stores, Inc.*, 750 A.2d 1170, 1174 (Del. 2000). And it is not enough for the alleged missing disclosure to be "somewhat more informative." *Kahn v. Lynch Commc'ns Sys., Inc.*, 669 A.2d 79, 89 (Del. 1995).

On appeal, Plaintiffs argue that there are three disclosure deficiencies in the Proxy: (1) the Special Committee's alleged "potential" conflicts of interest; (2) Morgan Stanley's alleged investments in KKR and certain of its portfolio companies; and (3) KKR's rollover participation. Each of these challenges is meritless.

1. The Proxy Fully Disclosed All Material Information Regarding The Special Committee Members' Independence

(a) Plaintiffs Bear The Burden To Plead A Conflict Of Interest That Would Rebut The Presumption Of Director Independence

Plaintiffs claim that the Proxy misleadingly described the Special Committee members as "independent." OB 21-23. But those statements were true. As a matter of well-established law, the alleged connections between Special Committee members and minority stockholders KKR and Elephant do not undermine independence or require any disclosure that wrongly questions their independence.

To start, Delaware law presumes directors are independent and disinterested. *Nguyen v. Barrett*, 2016 WL 5404095, at *5 (Del. Ch. Sep. 28, 2016). "[A] lack of independence turns on 'whether the plaintiffs have pled facts from which the director's ability to act impartially on a matter important to the interested party can be doubted because that director may feel either subject to the interested party's dominion or beholden to that interested party.'" *Sandys v. Pincus*, 152 A.3d 124, 128 (Del. 2016) (quoting *Delaware Cnty. Emps. Ret. Fund v. Sanchez*, 124 A.3d 1017, 1024 n.25 (Del. 2015)).

Plaintiffs ignore this well-settled law and claim that where a Proxy discloses directors as "independent," then all "potential" conflicts must be disclosed. *See* OB 21-22. However, Delaware courts repeatedly have held that conflicts—whether framed as actual or potential—need be disclosed only if they overcome the

presumption of independence. For instance, in the very case that established the *Corwin* doctrine, the Court of Chancery considered the plaintiffs' argument that the proxy was misleading because it disclosed that directors were independent without disclosing alleged conflicts. *See In re KKR Fin. Hldgs. LLC S'holder Litig.*, 101 A.3d 980, 999 (Del. Ch. 2014), *aff'd on other grounds sub nom. Corwin*, 125 A.3d 304. The court rejected that argument, holding "Plaintiffs appear to be taking issue with the fact that the 2014 Proxy did not state that some or all of the members of the Transaction Committee were not independent. As an initial matter, the factual premise underlying plaintiffs' position rings hollow because, as discussed above, the complaint fails to allege facts sufficient to overcome the presumption of independence of any of the members of the Transaction Committee." *Id.* at 999-1000. In short, if a supposed conflict is not "sufficient to overcome the presumption of independence," then that potential conflict need not be disclosed. *Id.* at 1000.

Numerous cases are in accord. *See Harcum v. Lovoi*, 2022 WL 29695, at *22-23 (Del. Ch. Jan. 3, 2022) (recognizing "presumption of independence" applies in the context of a challenge to disclosures and granting dismissal where "[t]he allegations of the Complaint do not come close to a reasonable inference that [defendant] . . . was not independent.") (quotation omitted); *Franchi v. Firestone*, 2021 WL 5991886, at *6 (Del. Ch. May 10, 2021) ("Plaintiffs allege that '[t]he Proxy failed to disclose material information regarding the Special Committee

members' conflicts of interest.' Because Plaintiffs failed to adequately allege that any member of the Special Committee was conflicted, disclosures related to the supposed conflicts are immaterial."); *Orman v. Cullman*, 794 A.2d 5, 33 (Del. Ch. 2002) ("Orman has not pled particularized facts that would support a finding that defendant director Barnet either suffered a disabling interest or lacked independence . . . As a result, there can be no material omission in the failure of the Proxy Statement to mention such nonexistent interest or lack of independence . . . ."); *Kahn v. Caporella*, 1994 WL 89016, at *7 (Del. Ch. Mar. 10, 1994) (rejecting claim that conflicts needed to be disclosed when conflicts were not cognizable).

Plaintiffs fail to address these cases, except in a footnote, where Plaintiffs wrongly state that *KKR* and *Franchi* were decided "outside the disclosure context." OB 32 n.146. Plaintiffs also fail to provide any explanation for why a supposed conflict must be disclosed when it does not actually undermine the director's independence. As *In re KKR* explained: "[T]he duty of disclosure does not require directors to admit wrongdoing. To necessitate such a disclosure [that directors were conflicted] would require that directors 'engage in self-flagellation and draw legal conclusions,' in conflict with well settled Delaware law. Consequently, plaintiffs have failed to identify any deficiencies in the 2014 Proxy regarding the independence of the members of the Transaction Committee." 101 A.3d at 1000; *see also Loudon v. Archer-Daniels-Midland Co.*, 700 A.2d 135, 143 (Del. 1997)

("The directors' duty of disclosure does not oblige them to characterize their conduct in such a way as to admit wrongdoing."). Thus, the Proxy can say truthfully that the Special Committee members are independent and need not simultaneously cast doubt upon that disclosure where the supposed conflicts do not actually undermine independence.

If supposed conflicts must be disclosed regardless of their impact on independence, then there is no limit to what must be disclosed—any economic interest of any director that in any way theoretically could affect their behavior in the transaction would need to be disclosed. Plaintiffs provide no test or limiting principle on disclosures of supposed *potential* conflicts. This approach defies the law and common sense that "not every fact tending remotely to suggest that a board member's interest might differ in some respect from that of the stockholders amounts to a material omission." *In re OM Grp., Inc. S'holders Litig.*, 2016 WL 5929951, at *15 (Del. Ch. Oct. 12, 2016).

Not one of the cases Plaintiffs cite supports their theory that all supposed potential conflicts must be disclosed regardless of whether they actually can undermine the directors' independence. *See* OB 22-23 (citing *Tornetta v. Musk*, 310 A.3d 430 (Del. Ch. 2024), *rev'd on other grounds sub nom. In re Tesla, Inc. Deriv. Litig.*, 351 A.3d 1005 (Del. 2025); *Eisenberg v. Chicago Milwaukee Corp.*, 537 A.2d 1051 (Del. Ch. 1987); *Allen v. Harvey*, 2023 WL 7122641 (Del. Ch. Oct. 30, 2023);

and *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund I, Inc.*, 824 A.2d 11 (Del. Ch. 2002)). Indeed, Plaintiffs' approach would create a clear conflict with *KKR*, *Harcum*, *Franchi*, and *Orman*.

In *Tornetta*, the court held that actual and potential conflicts had to be disclosed because "[t]he description of the Compensation Committee members as 'independent' was decidedly untrue as to Gracias and proved untrue as to the remaining committee members" and "all of the directors acted under a controlled mindset, calling into question the disclosure as to each of them." 310 A.3d at 522. No such finding of a "controlled mindset" was (or could have been) made here. Moreover, the undisclosed information in *Tornetta* was material because there was a conflict "with a transactional counterparty," *i.e.*, Elon Musk, Tesla's controlling stockholder. *Id.* at 521-22. Here, as discussed *infra* at 25-35, the alleged conflicts were with two minority stockholders who were not transactional counterparties or controllers.[5] *Tornetta* is inapposite.

Eisenberg also does not aid Plaintiffs, as it shows only that a material, financial conflict that undermines independence should be disclosed. 537 A.2d 1051. That case involved a corporation submitting a tender offer for its preferred stock. *Id.*

[5] The only exception, discussed *infra*, are Plaintiffs' allegations that Klausmeyer served on the board of Jamf, a Vista portfolio company, and that Watzinger was "friends" with a Vista-affiliated individual. MTD Op. 33-34. These allegations come nowhere close to rebutting independence. *Id.*

at 1053. The court determined that the directors of the company, as significant owners of common stock, had conflicts with the preferred stockholders. *Id.* at 1054, 1061. This was because "[b]y decreasing the amount paid for the Preferred in the Offer, the directors correspondingly increase the amount of common shareholders' equity remaining in the corporation" of which they were major beneficiaries. *Id.* at 1060. This "inherent conflict," which was worth $3.5 million to the directors, was not disclosed. *Id.* at 1060-61. There is no similar allegation of such an inherent conflict here, whereby Special Committee members would increase their compensation by decreasing the deal price.

Plaintiffs also overread *Allen v. Harvey*'s statement that "any undisclosed information weighing against the disinterestedness of the committee, its members, and its advisors is extremely relevant to a reasonable stockholder's decisionmaking." 2023 WL 7122641, at *5 (Del. Ch. Oct. 30, 2023) (cleaned up). The point is that the information must actually rebut the presumption of independence. In *Allen*, the company created a supposedly independent Transaction Committee to negotiate against Blackstone, which sat on both sides of the deal. *Id.* But the Chair of the Transaction Committee was allegedly conflicted: Blackstone was the sole private equity sponsor of a company the Chair had founded, and three members of that company's management were Blackstone executives. *Id.* at *6. The proxy also failed to disclose that Barclays, a financial adviser on the deal, was providing

services to Blackstone for hundreds of millions of dollars. *Id.* at *7. As discussed below, there is nothing remotely approaching such facts to undermine independence here, where the Special Committee negotiated the Merger with Vista, not KKR or Elephant.

Nor does *Millenco* help Plaintiffs. That case involved a plaintiff seeking to invalidate director elections at a venture capital fund because of deficiencies in the proxy. 824 A.2d at 13. That proxy disclosed that two directors were affiliated with the fund's advisor while the others were "independent." *Id.* at 13. The proxy did not disclose that two of the "independent" directors had an extensive history working with one of the affiliated directors, Grillos, at a company called "eVineyard." *Id.* at 13. The court found that omission material because reasonable stockholders could find that the eVineyard investments gave Grillos influence over the two independent directors that "could be viewed as affecting their judgment." *Id.* at 18. Thus, *Millenco* is in accord with *KKR* and its progeny that potential conflicts require disclosure only if they undermine the presumption of independence.

(b) There Is No Actual Or Potential Conflict That Requires Disclosure Here

There is no disclosure violation here and the reason is simple. Virtually all of the supposed connections Plaintiffs identify are with KKR and Elephant, but the Special Committee negotiated the Merger with ***Vista***, not KKR or Elephant. There are no allegations that KKR or Elephant had any role in or influence over the Special

Committee's negotiations with Vista, and thus there is no conceivable scenario where purported conflicts with KKR or Elephant could have undermined the negotiation process or impugned the committee's member's independence to negotiate at arm's length with Vista.

Under any view of the law regarding disclosures of conflicts, there is no requirement to disclose a supposed conflict with a non-controlling, minority stockholder. Plaintiffs cite no precedent to support the creation of such a new and radical requirement. As the Court of Chancery explained: "It is theoretically possible that holdings in a rollover stockholder standing alone would create a potential conflict of interest. But Plaintiffs have not pled enough to support that inference here. This was a clean process. There are no allegations that KKR or Elephant influenced the Special Committee's negotiations with Vista." MTD Op. 34-35. Indeed, those firms were excluded by the Special Committee from the deal process. A0730. In short, given that KKR and Elephant did not influence negotiations, a prior business connection between them and certain committee members unrelated to the Merger does not create a conflict. If the rule were otherwise, then any connection with minority stockholders—or with anyone with some interest in the transaction, regardless of whether they influenced it in any way—necessarily creates a conflict. Even compiling such information, let alone putting into a proxy, would be unworkable and do nothing to aid stockholders in

discerning information that actually matters. *See Zirn v. VLI Corp.*, 1995 WL 362616, at *4 (Del. Ch. June 12, 1995) ("[T]he law ought [to] guard against the fallacy that increasingly detailed disclosure is always material and beneficial disclosure. In some instances the opposite will be true."), *aff'd*, 681 A.2d 1050 (Del. 1996).

Plaintiffs mischaracterize the Court of Chancery's reasoning as supposedly creating a *per se* rule that only conflicts that affect the deal process are material. OB 25-26. The court imposed no such rule. Rather, it recognized that in the circumstances here—concerning a connection to non-controlling, minority stockholders—Plaintiffs' claim of materiality necessarily depends on the idea that the supposed conflict affected the process in some way. If not, then a reasonable stockholder would not care because there is no plausible impact on the director's independence.

Plaintiffs rely on *Brookfield*, OB 27, but *Brookfield* simply recognized that there is a "different inquiry" for determining "whether a special committee breached its duty of care in hiring and managing its advisors" and "whether a special committee's advisor's conflicts were material information requiring disclosure." 314 A.3d 1108, 1131 (Del. 2024). The Court of Chancery did not conflate these two inquiries, the first of which is not even relevant in this case. The point is not whether the supposed conflict actually affected the deal, but whether it even *could* affect the

deal. If it could not, then it would not matter to a reasonable stockholder. And here, it could not for the simple reason that Plaintiffs do not even allege that KKR and Elephant had any role in the Special Committee's negotiations with Vista, or that KKR and Elephant's partial rollover caused the Special Committee to favor them over unaffiliated stockholders.

The details regarding each Special Committee member only confirm the lack of any plausible conflict that required disclosure.

(i) Venkatamaran

Plaintiffs point to Venkatamaran's investments in funds managed by KKR and Elephant, but Plaintiffs do not allege that the investments had any relation to KnowBe4 or the Merger. Thus, Plaintiffs contend that any investment in a minority stockholder with a partial rollover interest is material and warrants disclosure, but as discussed above, that contention is meritless. Notably, the cases Plaintiffs rely upon concern undisclosed connections with a *controller*, not simply a minority stockholder. *See* OB 24 n.118 (citing *Sandys v. Pincus*, 152 A.3d 124, 131 (Del. 2016); *In re Trados Inc. S'holder Litig.*, 73 A.3d 17, 54-55 (Del. Ch. 2013)).[6]

[6] The connections were also much stronger than those at issue here, as they concerned "a mutually beneficial network of ongoing business relations." *Sandys*, 152 A.3d at 131; *see also Trados*, 73 A.3d at 54-55 (detailing "long history" of business connections, including appointment to the board by the controller).

Even if it were possible that such an investment could require disclosure in some circumstances, there is no basis for finding it material here, given that Plaintiffs do not allege the size or nature of the investments or why they would render Venkataraman beholden to either entity, let alone to Vista. Plaintiffs concede they have no allegation regarding the investments' "nature, size and profitability," but say it suffices that "Venkataraman disclosed those investments to the Committee." OB 29. Plaintiffs cite nothing for this proposition, and the idea that every fact known to the Board should be disclosed is wrong as a matter of law. *See Wayne Cnty Emps. Ret. Sys. v. Corti*, 954 A.2d 319, 332 (Del. Ch. 2008) ("[T]he fact that something is included in materials that are presented to a board of directors does not, ipso facto, make that something material.") (quotation omitted); *IRA Tr. FBO Bobbie Ahmed v. Crane*, 2017 WL 7053964, at *15 (Del. Ch. Dec. 11, 2017) ("As this Court has stated, not every document reviewed by the board is material to a stockholder vote.") (quotation omitted).

Plaintiffs also assert that the "specifics" they allege regarding the investments suffice, OB 30, but the only supposed specific they cite is that investments in Elephant are usually large and invite-only.[7] The Court of Chancery correctly held

[7] Plaintiffs also use the conclusory phrase "special relationship." OB 30. The Amended Complaint cites to two websites to support its allegation that these investments indicate a special relationship between Venkataraman and Elephant. A0081. Neither even mentions Elephant and each contains only generic information

that these "generalized allegations" do not suffice. MTD Op. 35. Without more, participating in an "invitation only" investment, in a fund ***not*** alleged to be related to the challenged transaction, where Venkataraman disclosed to the Special Committee that the Elephant investments "were not material to his wealth," is not a material fact that must be disclosed to stockholders. A0706; *Sheldon v. Pinto Tech. Ventures, L.P.*, 2019 WL 336985, at *15 (Del. Ch. Jan. 25, 2019) (financial benefits to employees with "no connection" to challenged transaction immaterial); *see also DiRienzo v. Lichtenstein*, 2013 WL 5503034, at *12 (Del. Ch. Sept. 30, 2013) ("For a director to be beholden to a controlling party, the ties between the director and that party must be material to the director, meaning that the ties could affect the director's impartiality.").

Furthermore, as the Court of Chancery explained, Plaintiffs "fail[] to grapple with the fact that Venkataraman had significant economic incentives to maximize the deal value," and provide no allegation that "the size of the director's stake in the rollover stockholder" is "sufficiently sizeable to create conflicting economic incentives for an otherwise independent director." MTD Op. 35. Plaintiffs assert that the court did not specify the "significant economic incentives," but in fact those

about venture capital funds. This is insufficient. *See Firefighters' Pension Sys. of the City of Kansas City, Missouri Tr. v. Presidio, Inc.*, 251 A.3d 212, 258 (Del. Ch. 2021) (allegations that investment funds share "formulaic and structured" features were insufficient to "support an inference of a []conflict.").

incentives are clear and undisputed: Plaintiffs allege Venkataraman received roughly $37 million in the Merger. A0054. It is simple logic that a question regarding independence would arise only if there were sufficiently sizeable conflicting incentives. Plaintiffs say there were "incentives arising from Venkataraman's relationships with Elephant and KKR," OB 28, but they fail to identify those incentives, let alone how they compare to Venkataraman's sizeable interest in maximizing Merger consideration. In the absence of any plausible monetary benefit to Venkataraman from aligning with Elephant and KKR in the transaction, Plaintiffs resort to speculation about "valuable *future* investment opportunities" with KKR and Elephant. OB 29. But this speculation does not suffice to question independence, and Plaintiffs made no allegation regarding such future investment opportunities in the Amended Complaint.

In any event, Elephant and KKR were incentivized to maximize the price they would receive for the considerable stock they sold. Indeed, they both sold more shares than they rolled over, totaling nearly $850 million between them in the Merger. It is unreasonable to assume that KKR or Elephant would act against their own economic interest—each additional cent the Special Committee negotiated from Vista would increase the amount KKR and Elephant received. *See* A0057, 141. Thus, even had Plaintiffs pled some alignment between Venkataraman, on one hand,

and KKR and/or Elephant, on the other, such alignment still did not undermine their independence as it relates *to Vista*.

In sum, the allegations that Venkataraman made investments of unknown size not material to his wealth, in funds affiliated with minority stockholders (not the buyer), which had no role in the transaction, are not remotely material. As the Court of Chancery held, "[a] reasonable stockholder would not consider this information important in deciding how to vote." MTD Op. 35.

(ii) Klausmeyer

As Plaintiffs concede, the Proxy disclosed that Klausmeyer served on the Jamf and Ivalua boards. *See* OB 30; *see also* A0391. The Court of Chancery correctly rejected the idea that the Proxy did not disclose sufficient details about companies that have nothing to do with the Merger. *See* MTD Op. 37-38.

As to Jamf, the allegation that Vista appointed Klausmeyer to the board of this publicly traded company—for which the Amended Complaint alleges he was paid $1.2 million over five years (A0051)—does not alter the total mix of information. *See Franchi v. Firestone*, 2021 WL 5991886, at *5 (Del. Ch. May 10, 2021) (director's membership on two boards affiliated with alleged controller "is insufficient to cast doubt on [director's] independence"); *DiRienzo*, 2013 WL 5503034, at *13 ("[w]ithout any allegations pertaining to materiality," it is not "reasonably conceivable" that director's membership on a board affiliated with

alleged controller "would have influenced his decision-making"); *In re KKR*, 101 A.3d at 996 ("It is well-settled Delaware law that a director's independence is not compromised simply by virtue of being nominated to a board by an interested stockholder."). Plaintiffs have fallen far short of pleading that Klausmeyer "owe[s his] success" to Vista; indeed, they plead no relations between Klausmeyer and Vista beyond his fully disclosed service on the Jamf and KnowBe4 boards. *Cf. In re Match Grp., Inc. Deriv. Litig.*, 315 A.3d 446, 471-72 (Del. 2024) (director beholden because he spent 13 years working for controller, earning $55 million, and earned over $4.5 million serving as director of controller-affiliated companies).[8]

Plaintiffs argue that "[a]pposite 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." OB 32. But they cite no case law at all for this proposition. Earlier in the brief, Plaintiffs cited three cases, none of which is remotely on point. *See* OB 31 n.144. In one, the court found the plaintiff had failed to plead lack of independence for the four directors at issue. *See City of Hialeah Emps.' Ret. Sys. ex*

[8] The Court of Chancery's logic regarding the incentives also should apply to the alleged conflicts concerning Klausmeyer. Klausmeyer had motivation to obtain the highest merger price possible, as he had $6.1 million of stock options that vested in connection with the Merger. A0051. Plaintiffs offer no reason to believe that his purported conflicts outweighed that substantial interest in maximizing the Merger price.

rel. of nCino, Inc. v. Insight Venture P'rs, LLC, 2023 WL 8948218, at *9 (Del. Ch. Dec. 28, 2023), *aff'd*, 326 A.3d 1201 (Del. 2024). The other two concern a long history of connections that go far beyond the one-off board appointments at issue here. *See Atallah v. Malone*, 2023 WL 4628774, at *8-9 (Del. Ch. July 19, 2023) ("50-year business and personal relationship," "working closely together," "served as a director of various Malone-affiliated companies since 2004," and even then "the professional contacts described here are not necessarily sufficient to impugn Romrell's independence on their own," absent the "close personal relationship between Romrell and Malone"); *Trados II*, 73 A.3d at 54-55 (director had a "sense of 'owingness'" based on "long history" with venture capital fund, including appointment to the board of the company at issue, investment in the company where he was President, investment in another company where he was CEO, and working together on a number of other companies). Plaintiffs fail to cite any precedent for the idea that appointment to one board of an unrelated company undermines independence and must be disclosed.

As to Ivalua, the Amended Complaint does not allege that any entity affiliated with KKR appointed Klausmeyer to the Ivalua board or controlled his service on that board. Instead, Plaintiffs' argument is that entities purportedly affiliated with KKR made a minority investment in Ivalua years before the Merger and that Klausmeyer's Ivalua directorship overlapped with Shanley's directorship. *See* OB

30-31. As the Court of Chancery correctly found, the fact that KKR had a minority investment in Ivalua and appointed Shanley to the board do not suggest a conflict and are not material information to be disclosed. *See* MTD Op 37-38; *see also, e.g.*, *In re Dow Chem. Co. Deriv. Litig.*, 2010 WL 66769, at *9 (Del. Ch. Jan. 11, 2010) ("That directors of one company are also colleagues at another institution does not mean that they will not or cannot exercise their own business judgment with regard to the disputed transaction.").

(iii) Watzinger

Finally, Plaintiffs make no independent argument as to Watzinger, instead arguing that the Court of Chancery erred for the same reasons it purportedly did as to the other directors. *See* OB 32-33. As discussed above, there was no error as to the other directors, and thus no error as to Watzinger. Indeed, Plaintiffs make no argument as to why Watzinger's purported investments in KKR entities were material, given the absence of any allegations as to their size or any basis to believe they impacted Watzinger's independence. Nor did the Court err in rejecting Plaintiffs' allegation that a purported "friendship" between Watzinger and unnamed Vista affiliates required disclosure. MTD Op. 38 (citing *Beam v. Stewart*, 845 A.2d 1040, 1050 (Del. 2004); *see In re Kraft Heinz Co. Deriv. Litig.*, 2021 WL 6012632, at *10 (Del. Ch. Dec. 15, 2021) ("Allegations that individuals . . . described each

other as 'friends' are insufficient, without more, to rebut the presumption of independence."), *aff'd*, 282 A.3d 1054 (Del. 2022) (TABLE).[9]

[9] Again, the Court of Chancery's reasoning as to Venkataraman applies to Watzinger, who owned approximately $3.8 million of stock options that vested in connection with the Merger. A0055. In neither the Court of Chancery briefing or their opening appellate brief do Plaintiffs offer a reason for Watzinger to disregard that interest.

2. The Proxy Did Not Need To Disclose Morgan Stanley's And Its Clients' Investments in KKR

Plaintiffs' argument that the Proxy had to disclose the amount of Morgan Stanley's investments in KKR entities is baseless. OB 33-38. The Proxy disclosed that "Morgan Stanley, its affiliates, directors or officers, including individuals working with the Special Committee in connection with the Merger, may have committed and may commit in the future to invest in private equity funds managed by the Vista Related Entities, the KKR Related Entities, and Elephant Partners." A0328. The Proxy further disclosed, for the two years before the Merger, the fees Morgan Stanley received from (1) "Vista Related Entities"; (2) "KKR Related Entities"; and (3) KnowBe4. *Id*.

Plaintiffs ignore these disclosures and argue that the Proxy expressly should have quantified the investments in KKR and its affiliates at $550 million. *See* OB 34. This number is misleading because it includes all discretionary client accounts that Morgan Stanley manages, rather than money that Morgan Stanley invests for itself. A1166, A1172-73.[10] Plaintiffs do not argue, nor could they, that Morgan Stanley client investments in KKR require disclosure. *See* MTD Op. 39 n.127

[10] It also includes roughly $350 million alleged to be held in KKR portfolio companies, rather than KKR itself, A1164-73, which have no economic or logical connection to the Special Committee's dealings with Vista, much less a minority stockholder (KKR) whose board designee had no alleged influence over the committee's negotiations.

("Delaware law does not require that a financial advisor to a special committee disclose investments held on behalf of its clients."). While expressing doubt about Plaintiffs' number, the Court of Chancery stated that it had to accept Plaintiffs' allegation that "[m]uch, if not substantially all of those investments, Morgan Stanley appeared to hold for its own account." *Id.* (quoting A0156).

Even assuming *arguendo* that allegation based on unexplained "appear[ances]" were true, the Court of Chancery correctly held there is no disclosure requirement for the amount of a financial advisor's investment in a minority, non-controlling stockholder. As the court correctly noted, the principal case on which Plaintiffs rely concerned an undisclosed interest in the ***acquiror*** against whom the financial advisor was negotiating. *City of Dearborn Police & Fire Revised Ret. Sys. v. Brookfield Asset Mgmt.*, 314 A.3d 1108, 1132 (Del. 2024).[11] Even in that situation, whether an advisor-acquiror relationship should be disclosed is "a close call." *Brookfield*, 314 A.3d at 1113. Here, it is not a close call, as Plaintiffs do not allege that Morgan Stanley had any undisclosed interest in Vista, and "KKR was neither a controller nor

[11] Likewise, in *Inovalon*, this Court found financial advisors' receipt of fees from the acquiror (not a minority, non-controlling stockholder) was material. *See City of Sarasota Firefighters' Pension Fund v. Inovalon Hldgs., Inc.*, 319 A.3d 271, 293-94 (Del. 2024); *Ortsman v. Green*, 2007 WL 702475, at *1-2 (Del. Ch. Feb. 28, 2007) (same); *see also In re EngageSmart, Inc. S'holder Litig.*, 354 A.3d 796, 832 (Del. Ch. 2026) ("A proxy statement must state whether a financial advisor has business relationships with the issuer's transactional counterparty.").

a counterparty." MTD Op. 40. Because KKR was simply "a minority stockholder that rolled over its shares," the "information on Morgan Stanley's investments with a rollover stockholder (or its affiliates)—who did not participate in the Special Committee process—does not alter the total mix of information." *Id.*; *see Assad v. Botha*, 2023 WL 7121419, at *5 (Del. Ch. Oct. 30, 2023) (rejecting claim that proxy needed to disclose fees financial advisor received from minority stockholders because those purported conflicts "would have been unimportant to a reasonable [] stockholder").[12]

Brookfield's reasoning rests on the potential concern when a financial advisor is negotiating with a counterparty in which it is heavily invested, such that it may be motivated to favor the counterparty's interests. *See Brookfield*, 314 A.3d at 1135 ("Deutsche Bank's ongoing relationship with [the bidder] gave it a powerful incentive 'to maintain good will and not push too hard' during the negotiations.'") (quoting *In re PLX Tech. Inc. S'holder Litig.*, 2018 WL 5018535, at *43 (Del. Ch. Oct. 16, 2018)). There is no such concern here, where the investment is in a minority stockholder that is not the transaction counterparty and not even involved in

[12] Once again, Plaintiffs err in suggesting that the Court of Chancery "improperly conjoined the separate disclosure and process inquiries." OB 37. There was no conjoining; rather, KKR's lack of any role in the negotiations is a fact that must be considered. And given that KKR also was not a controller, the size of investments in KKR does not require disclosure.

negotiations. Indeed, if financial advisors have to disclose every investment in a minority stockholder, it would turn proxies into an unreadable mess of useless information.

Moreover, the creation of any new rule requiring disclosures of every investment by a financial advisor in a minority stockholder would be especially misplaced here. Contrary to Plaintiffs' suggestion, *see* OB 36, KKR was not a "counterparty" in the Merger. Morgan Stanley did not negotiate against KKR, and it did not even indirectly negotiate against KKR's interests. As discussed *supra* at 31, even if KKR was allegedly price insensitive as to the equity it was rolling over (i.e., less than half its shares), it was aligned with stockholders in obtaining the highest transaction price for the millions of shares it sold (i.e., more than half its shares). *See In re Crimson Expl. Inc. S'holder Litig.*, 2014 WL 5449419, at *17 (Del. Ch. Oct. 24, 2014) ("Stockholders generally are presumed to have an incentive to seek the highest price for their shares. That inference or presumption is even stronger in the case of large stockholders."). There is no allegation that KKR was motivated to seek a lower price, and any such suggestion would require a nonsensical assumption that KKR acted against its own economic interest. Moreover, the amount that KKR rolled over was based on discussions between KKR and Vista, not KKR and the Special Committee (or Morgan Stanley), though the Special Committee maintained active oversight of such discussions. A0123-24, A0129-30,

A0136. Morgan Stanley's KKR investments thus never presented any potential conflict, let alone one that required disclosure of specific amounts of Morgan Stanley's (and its clients') total investments in all KKR entities.

Finally, Plaintiffs also point to undisclosed, then-current engagements between Morgan Stanley and KKR, *see* OB 34, but Plaintiffs did not allege in the Amended Complaint that these required disclosure. Regardless, this argument fails for the same reasons discussed above. KKR is not a counterparty or a controller, and the details of engagements between Morgan Stanley and KKR on unrelated transactions are not material, especially when stockholders already knew that Morgan Stanley and KKR engaged in numerous transactions and that Morgan Stanley received (and may in the future receive) substantial fees from KKR.

3. The Proxy Adequately Disclosed KKR's Rollover

Plaintiffs' argument regarding the KKR rollover fails to confront the extensive disclosures that the Proxy provided. OB 38-44. As the Court of Chancery explained: "The Proxy Statement disclosed in detail the negotiating process that led to KKR's final rollover amount, including that it was interested in potentially 'rolling all or a part of [its] equity' in a potential transaction and that its 'preliminary interest in a potential rollover . . . and the potential quantum for such equity rollover' was requested by Vista and conveyed to Morgan Stanley, the Special Committee, and Vista before Vista had submitted an offer to buy KnowBe4." MTD Op. 42 (quoting A0292, A0297, A0300-04). In addition, the Proxy disclosed the final rollover amount (attaching the rollover agreement), and "[f]rom these disclosures, stockholders knew that the amount of KnowBe4 stock KKR would roll over was fluid and that KKR would potentially roll over its entire equity stake." *Id*.

Plaintiffs argue nonetheless that the Proxy had to disclose that the final rollover amount increased from a preliminary estimate made before any price negotiations had occurred. *See* OB 41. However, Delaware courts consistently recognize that a proxy statement's disclosure is sufficient without describing such a preliminary estimate. *See Anchorage Police & Fire Ret. Sys. v. Adolf*, 2025 WL 1000153, at *25 (Del. Ch. Apr. 3, 2025) (finding a proxy statement's disclosure sufficient when it described the evolution of a private equity firm's rollover

financing to another private equity firm); *City of Sarasota Firefighters' Pension Fund v. Inovalon Hldgs., Inc.*, C.A. No. 2022-0698-KSJM, at 44-45 (Del. Ch. July 31, 2023) (TRANSCRIPT), *rev'd on other grounds*, 319 A.3d 271 (Del. 2024) (finding no disclosure violation because defendant's proposed rollover amount "says nothing" about his purported belief about the company's value).

Plaintiffs' attempts to distinguish *Adolf* and *Inovalon* are unavailing. OB 43. Plaintiffs assert that *Adolf* did not concern the "*change* in quantum" of the rollover, *see id.*, but *Adolf* did not discuss any such change because it determined that such detail was not required. *Adolf*, 2025 WL 1000153, at *25. The general description that "CD&R expressed a willingness to increase its offer 'in the event that Stone Point was willing to roll over its equity interests'" sufficed to "convey the correlation between the" rollover amount and "CD&R's ability and willingness to engage in a deal." *Id.* The Proxy here disclosed far more detail regarding the rollover, as discussed above.

Plaintiffs assert that *Inovalon* did not expressly describe a changed rollover amount, *see* OB 43-44, but the key holding in *Inovalon* was that a controlling stockholder CEO's alleged view, expressed through a rollover estimate, that the company was worth significantly more than the deal price, was not material. *Inovalon*, C.A. No. 2022-0698-KSJM, at 44-45. That is *precisely* the allegedly withheld fact that Plaintiffs here claim rendered the Proxy misleading.

Even if a changed rollover amount theoretically could require disclosure, it is immaterial here, given that the alleged preliminary estimate came *two months before* Vista made its opening bid, *three months* before the Merger Agreement was signed, and before KKR even "construct[ed] a valuation model" of KnowBe4. A0130. This early estimate (akin to putting one's finger in the wind) was quintessential "hypothetical and inherently speculative" information that Delaware courts routinely find immaterial. *Brookfield*, 314 A.3d at 1139 (quotation omitted); *see In re Wayport, Inc. Litig.*, 76 A.3d 296, 321 (Del. Ch. 2013) ("[T]he existence of preliminary negotiations regarding a transaction generally becomes material once the parties have agreed on the price and structure of the transaction.") (quotation omitted); *Arnold v. Soc'y for Sav. Bancorp, Inc.*, 650 A.2d 1270, 1282 (Del. 1994) ("Goldman's share valuation was too unreliable to be material. A board of directors must balance potential benefit versus harm when deciding whether or not to disclose an investment advisor's earnings per share valuation.").

Moreover, as the Court of Chancery correctly recognized: "KKR's earlier, estimated rollover amounts were contingent on other factors that changed throughout negotiations. Indeed, Plaintiffs concede that 'the price Vista would pay in any transaction could affect the amount of equity Vista asked investors to roll over.'" MTD Op. 42-43 (quoting A0125). Plaintiffs assert that "Vista's decision to offer a cash-out price considerably below the Committee's pricing guidance … was the

"key 'factor'" in the changed rollover amount, OB 41-42, but no such "key factor" allegation is made in the Amended Complaint, let alone with any factual basis to support this rampant speculation. Regardless, the Proxy expressly disclosed that KKR informed the Special Committee early in the process that KKR (along with Elephant and Sjouwerman) "may be interested in 'rolling' *all or a part of their equity interests* in KnowBe4 in" any transaction. A0292 (emphasis added). Thus, contrary to Plaintiffs' claims, stockholders fully understood that the amount KKR was willing to rollover was fluid throughout negotiations and necessarily contingent on the final deal terms.

CONCLUSION

The Court should affirm the Motion to Dismiss Opinion.

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