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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 October 13, 2026**

APPELLANTS' REPLY BRIEF ON APPEAL

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TABLE OF CONTENTS

Page

TABLE OF CITATIONS ii

INTRODUCTION 1

ARGUMENT 6

I. DEFENDANTS FAIL TO MEET THEIR BURDEN TO ESTABLISH ENTITLEMENT TO JUDICIAL CLEANSING 6

A. The Proxy Omitted the Committee Members' Actual or Potential Conflicts 6

1. Defendants Ignore—and Defy—the Partial Disclosure Doctrine 7

2. Elephant and KKR's Rollover Indisputably Aligned them with Vista on the Merger's Buy-Side 12

3. Defendants' Remaining Arguments Defy Applicable Standards and the Record 15

B. The Proxy Repeatedly Described Morgan Stanley as "Independent," Yet Omitted Its Potential and Actual Conflicts 17

C. KKR's Dramatic Rollover Increase Upon Learning the Merger Price Would Be Unexpectedly Low Was Material 19

II. ELEPHANT, KKR AND SJOUWERMAN CONSTITUTED A CONTROL GROUP 23

CONCLUSION 30

TABLE OF CITATIONS

Cases **Page(s)**

Allen v. Harvey,
2023 WL 7122641 (Del. Ch. Oct. 30, 2023) 8, 9

Anchorage Police & Fire Ret. Sys. v. Adolf,
2025 WL 1000153 (Del. Ch. Apr. 3, 2025).....20

Appel v. Berkman,
180 A.3d 1055 (Del. 2018) 7, 16, 20

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

City of Sarasota Firefighters' Pension Fund v. Inovalon Hldgs., Inc.,
319 A.3d 271 (Del. 2024) 2, 18, 19

Corwin v. KKR Fin. Hldgs. LLC,
125 A.3d 304 (Del. 2015) 10

In re Del Monte Foods Co. S'holders Litig.,
25 A.3d 813 (Del. Ch. 2011) 17

Dubroff v. Wren Hldgs., LLC,
2009 WL 1478697 (Del. Ch. May 22, 2009).....25

Eisenberg v. Chi. Milwaukee Corp.,
537 A.2d 1051 (Del. Ch. 1987) 8, 9, 20

Frank v. Elgamal,
2012 WL 1096090 (Del. Ch. Mar. 30, 2012) .....*passim*

Frank v. Elgamal,
2014 WL 957550 (Del. Ch. Mar. 10, 2014) 25

Garfield v. BlackRock Mortg. Ventures, LLC,
2019 WL 7168004 (Del. Ch. Dec. 20, 2019).....29

Gilmartin v. Adobe Res. Corp.,
1992 WL 71510 (Del. Ch. Apr. 6, 1992).....20

In re Hansen Med., Inc. S'holders Litig.,
2018 WL 3025525 (Del. Ch. June 18, 2018).....*passim*

Harcum v. Lovoi,
2022 WL 29695 (Del. Ch. Jan. 3, 2022).....10, 11

In re KKR Fin. Hldgs. S'holder Litig.,
101 A.3d 980 (Del. Ch. 2014), *aff'd sub nom.*
Corwin v. KKR Fin. Hldgs. LLC, 125 A.3d 304 (Del. 2015).....10

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

MH Haberkorn 2006 Tr. v. Empire Resorts, Inc.,
C.A. No. 2020-0619-KSJM (Del. Ch. July 23, 2021)
(TRANSCRIPT) 29

Millenco L.P. v. meVC Draper Fisher Jurvetson Fund I, Inc.,
824 A.2d 11 (Del. Ch. 2002) 8

In re Mindbody, Inc. S'holder Litig.,
2023 WL 2518149 (Del. Ch. Mar. 15, 2023) 1

Morrison v. Berry,
191 A.3d 268 (Del. 2018).....6

Patel v. Duncan,
2021 WL 4482157 (Del. Ch. Sept. 30, 2021).....27

Sheldon v. Pinto Tech. Ventures, L.P.,
220 A.3d 245 (Del. 2019).....5, 23, 27

Tornetta v. Musk,
310 A.3d 430 (Del. Ch. 2024) 6

van der Fluit v. Yates,
2017 WL 5953514 (Del. Ch. Nov. 30, 2017).....25, 27

INTRODUCTION

In urging the Court to wield judicial cleansing as the "massive eraser" it was never intended to be,[1] Defendants evade the dispositive facts, precedent, and doctrine that compel reversal.

Defendants ignore that the Merger involved an indisputably majority-conflicted board and three conflicted stockholders with Board seats and mathematical voting control—Elephant, KKR and Sjouwerman—who coordinated their collective $800M rollover, leaving minority stockholders with a price the Committee had deemed "[n]ot in the right zone for a transaction."[2] While reciting mundane process statistics,[3] Defendants ignore that Vista's judicially documented "*modus operandi* is speed" and "truncating the process and reducing interloper risk" by "sprinting to the finish line[,]"[4] and that Vista flawlessly deployed that strategy by pre-planning the Merger with Elephant, KKR and Sjouwerman, then sprinting to signing with assistance from a Committee harboring undisclosed conflicts with Elephant, KKR and Vista.[5]

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[1] Appellant's Opening Brief ("OB") at 1 (Trans. ID 80192389). Undefined capitalized terms have the meaning ascribed therein.
[2] A1278.
[3] Appellees Sjoerd Sjouwerman and KnowBe4, Inc.'s Answering Brief ("SSKB4 Br.") at 1 (Trans. ID 80593809).
[4] *In re Mindbody, Inc. S'holder Litig*., 2023 WL 2518149, at *1 (Del. Ch. Mar. 15, 2023).
[5] A1359-61.

Defendants ignore that, as established in Plaintiffs' Opening Brief,[6] rollovers create conflicts by placing rollover stockholders on the transaction's buy-side to "'align the economic incentives among participants in the post-transaction entity.'"[7] Here, Elephant and KKR's $725M rollover aligned them with Vista as buy-side entities identified in the Proxy (along with their affiliated KnowBe4 directors) as "Purchaser Filing Parties" under Rule 13e-3,[8] and who "would rationally agree to a lower sale price in order to secure a greater profit from [their rollover] investment[.]"[9] Defying this reality—including the pleading stage record, Defendants' own concessions catalogued in the Opening Brief, and the Proxy[10]—Defendants falsely declare Elephant and KKR unconflicted because they "are not the counterparties in the Merger, but rather minority stockholders."[11] Defendants' last-ditch argument that Elephant and KKR—who each rolled-over 46% of their shares—were unconflicted "net sellers" fails under longstanding precedent.[12]

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[6] OB 2, 26 & nn.122-127.
[7] *City of Sarasota Firefighters' Pension Fund v. Inovalon Hldgs., Inc.*, 319 A.3d 271, at 278 n.29 (Del. 2024).
[8] A0260-62; A0264; A0401-03.
[9] *In re LNR Prop. Corp. S'holders Litig.*, 896 A.2d 169, 178 (Del. Ch. 2005).
[10] *Supra* n.6.
[11] SSKB4 Br. 5.
[12] *E.g.*, *Frank v. Elgamal*, 2012 WL 1096090, at *9-10 (Del. Ch. Mar. 30, 2012) (rejecting "net seller" argument regarding 25% rollover); *In re LNR*, 896 A.2d at 178 (same regarding 20.4% rollover).

Defendants also completely ignore the partial disclosure doctrine—a bedrock principle that permeates Plaintiffs' Opening Brief[13] and encompasses each appealed-from disclosure failure—to claim that "Plaintiffs' position [*i.e.*, that failure to disclose the at-least *potential* conflicts of directors affirmatively represented as "independent"] would rewrite Delaware law[.]"[14] Defendants' silence regarding that doctrine is deafening.

Ignoring *Brookfield*'s reversal of a failure to distinguish between assessing potential conflict-based disclosures versus assessing an actual conflict's *impact*,[15] Defendants declare Elephant and KKR-related conflicts irrelevant because Elephant and KKR were purportedly excluded from the Merger process. That argument defies *Brookfield*, ignores the Committee members' conflicts with Elephant and KKR, and misrepresents the pre-discovery record evidencing Elephant and KKR's involvement both before and during the Merger process, including that: (i) secret direct discussions with Vista pre-dated and launched the process[16]; (ii) the Committee sought and received Elephant and KKR's views on pricing and valuation[17]; (iii) Vista's bidding was conditioned on the fact and amount of

[13] OB 3-4, 21, 31, 34-35, 39, 41.
[14] SSKB4 Br. 2.
[15] *City of Dearborn Police & Fire Revised Ret. Sys. v. Brookfield Asset Mgmt. Inc.*, 314 A.3d 1108, 1131 (Del. 2024).
[16] OB 8-9.
[17] *E.g.*, A1323-24.

Elephant's and KKR's rollovers[18]; and (iv) Elephant and KKR discussed with the Committee their views of Vista's proposals and counterproposals.[19]

Defendants' remaining disclosure arguments likewise fail.

First, Defendants fail to distinguish the cases requiring disclosure of the Committee members' actual *and potential* conflicts, and ignore the difference between (i) a claim that a director should have been affirmatively described as conflicted and/or was falsely characterized as independent; and (ii) a claim, like here, that the board omitted specific facts without which repeatedly characterizing directors as "independent" is misleading and/or incomplete. Defendants cannot escape that the Committee members' relationships with Elephant, KKR and Vista were expressly identified as at-least *potential* conflicts at the Committee's July 13 meeting, yet concealed from stockholders.

Second, Defendants fail to minimize Morgan Stanley's undisclosed *$550M* investments in KKR, and mischaracterize KKR as a mundane and firewalled "non-controlling, minority stockholder"[20] while ignoring KKR's rollover-based conflict and involvement before and during the Merger process.

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[18] *E.g.*, A0135-36; A0304-05; A1032-33.
[19] *Id.*
[20] SSKB4 Br. 38.

Third, Defendants primarily defend their omission of KKR's decision to dramatically increase its rollover upon learning the (lower-than-projected) Merger price by citing *other* information they disclosed, thus (inadvertently) highlighting the partial disclosure doctrine's application. Effectively conceding the material omission, Defendants defy the pleadings-stage standard by improperly dismissing well-pled allegations (backed by documents) as "rampant speculation,"[21] and cite two plainly inapposite cases.

Finally, Defendants cannot refute that the Rollover Group constituted a control group. Defendants' assertion that *Sheldon*[22] overruled the closest precedent—*Frank*—ignores that both cases state the same rule and effectively concedes the Trial Court's error. Defendants fail to defend the Trial Court's silent departure from multiple control group precedents.

This Court should reverse.

[21] SSKB4 Br. 45.
[22] *Sheldon v. Pinto Tech. Ventures, L.P.*, 220 A.3d 245 (Del. 2019).

ARGUMENT

I. DEFENDANTS FAIL TO MEET THEIR BURDEN TO ESTABLISH ENTITLEMENT TO JUDICIAL CLEANSING

Defendants fail to refute that the Trial Court erroneously applied judicial cleansing.

A. The Proxy Omitted the Committee Members' Actual or Potential Conflicts

"[T]he Proxy could have discussed the relevant relationships while stating that the Board did not view them as serious impediments to independence….*What defendants were not free to do was to take the position that stockholders had no right to know this information* because…the defendants…had determined it was not important."[23]

That is precisely what happened here. Pressed about their Merger-related conflicts at their July 13 meeting, the Committee members identified relationships with three entities on the Merger's buy-side—Vista, Elephant, and KKR. The Proxy—which acknowledged that Elephant's and KKR's rollovers gave them disparate interests in the Merger[24]—"traveled down the road"[25] of partial disclosure

[23] *Tornetta v. Musk*, 310 A.3d 430, 523 (Del. Ch. 2024) (emphasis added).
[24] A0328; A0339.
[25] *Morrison v. Berry*, 191 A.3d 268, 283 (Del. 2018).

by affirmatively characterizing the Committee members as "independent" *ten times*, yet omitted all of their at-least potential conflicts.

1. Defendants Ignore—and Defy—the Partial Disclosure Doctrine

The partial disclosure doctrine forbids directors from speaking on a subject but "disclosing only part of the story[.]"[26] The Board's repeated, affirmative characterization of each Committee member as "independent"—including as a basis for recommending the Merger—intentionally instilled stockholders with utmost confidence in the Committee's independence.

Defendants completely ignore the partial disclosure doctrine. Instead, they (i) grasp at factual differences irrelevant to the precedent establishing that the partial disclosure doctrine requires disclosure of *potential* conflicts regarding directors affirmatively represented as independent; and (ii) falsely claim that inapposite decisions "clear[ly] conflict"[27] with that precedent.

"[W]here…omitted information goes to the independence…of directors who are identified as the company's 'independent'…directors, the 'relevant inquiry is not whether an actual conflict of interest exists, but rather whether full disclosure of

[26] *Appel v. Berkman*, 180 A.3d 1055, 1064 (Del. 2018).
[27] SSKB4 Br. 23.

potential conflicts of interest has been made.'"[28] Defendants concede that *Tornetta* "held that actual *and potential* conflicts had to be disclosed…."[29] Importantly, that rule carries added prominence where, as here, a committee's "independence" is promoted "as a reason for voter confidence[.]"[30]

Defendants fail to distinguish the partial disclosure precedent.

Dodging *Millenco*'*s* holding requiring disclosure of potential conflicts, Defendants key on irrelevant factual differentiation (*i.e.*, that the conflicts arose in the director election—rather than merger—context).[31] Again ignoring Elephant and KKR's rollover-based conflict, Defendants merely note that the *Tornetta* conflicts involved a controller rather than "two minority stockholders," and a (post-trial) finding of controlled mindset.[32] Regarding *Eisenberg*, Defendants likewise recite irrelevant factual differences (*e.g.*, "[t]hat case involved a corporation submitting a tender offer"[33]) without confronting *Eisenberg*'s holding that stockholders are

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[28] *Millenco L.P. v. meVC Draper Fisher Jurvetson Fund I, Inc.*, 824 A.2d 11, 15 (Del. Ch. 2002) (emphasis added)); *see also Eisenberg v. Chi. Milwaukee Corp.*, 537 A.2d 1051, 1061 (Del. Ch. 1987) ("[Stockholders] were entitled to know that certain of their fiduciaries had a self-interest that was arguably in conflict with their own, and the omission of the fact was material.").
[29] SSKB4 Br. 23 (emphasis added).
[30] *Allen v. Harvey*, 2023 WL 7122641, at *5 (Del. Ch. Oct. 30, 2023).
[31] SSKB4 Br. 25.
[32] SSKB4 Br. 23.
[33] *Id*.

"entitled to know that certain [] fiduciaries ha[ve] a self-interest that [i]s *arguably* in conflict with their own, and the omission of the fact [i]s material."[34]

Defendants also harp on irrelevant factual differentiation from *Allen*, and overtly rewrite[35] *Allen*'s clear holding that "*any* undisclosed information *weighing against* the disinterestedness of the committee, its members, and its advisors [i]s extremely relevant to a reasonable stockholder's decisionmaking."[36] Defendants invert it, declaring: "The point is that the information must *actually rebut* the presumption of independence."[37]

Defendants next mischaracterize five inapposite cases to falsely manufacture a purported precedential conflict.[38] Those cases address what plaintiffs must allege to establish an actual (rather than merely potential) conflict *if the plaintiffs claim a director should have been affirmatively described as conflicted, and/or was falsely characterized as independent*. That rule is inapplicable here, where Plaintiffs allege—under the partial disclosure doctrine—the omission of facts without which the repeated characterization of the Committee members as "independent" is misleading.[39]

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[34] *Eisenberg*, 537 A.2d at 1061.
[35] SSKB4 Br. 24-25.
[36] 2023 WL 7122641, at *5.
[37] SSKB4 Br. 24 (emphasis added).
[38] SSKB4 Br. 23.
[39] *Id.*

Corwin v. KKR Financial Holdings LLC[40] confirms this. Unlike here, the *Corwin* plaintiffs failed to "identify[] any fact concerning any particular director that allegedly was omitted," and instead objected that the "*Proxy did not state that some or all [committee members] were not independent*."[41] The court rejected that argument because "the duty of disclosure does not require directors to admit wrongdoing" (*i.e.*, the *legal conclusion* of conflict/non-independence), which would be "self-flagellation."[42] Similarly, the *Kahn v. Corporella* plaintiff alleged a "failure to disclose that the Special Committee and its advisors *were not independent*,"[43] and the *Orman v. Cullman* plaintiff alleged "it was a material omission that the Proxy did not disclose that [a director] *was interested and/or lacked independence*[.]"[44] *Franchi v. Firestone*—a summary order with a brief legal analysis that does not identify the alleged conflicts—merely cites *Orman*'s holding in summarily denying a disclosure claim.[45] And the *Harcum* plaintiff alleged that the "Proxy falsely stated that the special committee…was 'disinterested,'"[46] and therefore sought—but

[40] 125 A.3d 304 (Del. 2015).
[41] *In re KKR Fin. Hldgs. S'holder Litig.*, 101 A.3d 980, 999-1000 (Del. Ch. 2014) (emphasis added), *aff'd sub nom. Corwin v. KKR Fin. Hldgs. LLC*, 125 A.3d 304 (Del. 2015).
[42] *Id.*
[43] 1994 WL 89016, at *6 (Del. Ch. Mar. 10, 1994).
[44] 794 A.2d 5, 33 (Del. Ch. 2002) (emphasis added).
[45] 2021 WL 5991886, at *6 (Del. Ch. May 10, 2021).
[46] *Harcum v. Lovoi*, 2022 WL 29695, at *22 (Del. Ch. Jan. 3, 2022).

failed—to prove the legal conclusion that the director was conflicted based on inapposite facts "[w]ith no citation to authority[.]"[47]

Critically, Plaintiffs do not claim the Proxy should have contained a (self-flagellating) independence-related legal conclusion, but rather that it was a materially misleading partial disclosure for the Proxy to affirmatively represent the Committee members as independent without *also* disclosing their at-least *potentially* conflicting relationships with interested parties and/or counterparties.[48]

Defendants' invocation of self-flagellation confirms they misunderstand the issue. Quoting *Corwin*, Defendants insist: "To necessitate such a disclosure [*that directors were conflicted*] would require that directors 'engage in self-flagellation and draw legal conclusions'…."[49] That is both completely true and completely divorced from Plaintiffs' *actual* argument and the applicable precedent.

Recognizing this, Defendants invoke the near-tautological principle that "'not *every* fact'" known to the board requires disclosure[50] and deploy the sky-is-falling

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[47] *Id*. at *23. The case and holding cited in Defendants' Notice of Supplemental Authority—*Wisconsin Laborers' Pension Fund v. Joshi*—expressly cites and relies upon the Trial Court's appealed-from decision. Trans. ID 80708527 at 20, n.113; 29, n.152; 31, nn.158 & 161. *Joshi* thus repeats errors challenged in this appeal, including contravening the precedent requiring disclosure of directors' *potential* conflicts under the partial disclosure doctrine.

[48] A0328.

[49] SSKB4 Br. 21 (quoting *Corwin*, 101 A.3d at 1000) (brackets in original; emphasis added).

[50] SSKB4 Br. 22 (quoting *OM Grp*., 2016 WL 5929951 at *15) (emphasis added).

argument that disclosing potential conflicts under the partial disclosure doctrine "would be unworkable."[51] False. Directors—and their counsel—routinely identify and disclose potential (and actual) conflicts. Indeed, they did precisely that at the Committee's July 13 meeting. And this Court's precedent, including *Brookfield*, requires no less.

2. Elephant and KKR's Rollover Indisputably Aligned them with Vista on the Merger's Buy-Side

Defendants declare any conflict respecting Elephant and KKR categorically irrelevant, arguing those entities were neither controllers nor third-party acquirors and "the Special Committee negotiated the Merger with *Vista*, not KKR or Elephant."[52] As Plaintiffs explained[53] but Defendants completely ignore, precedent and evidence (including the Proxy) confirm that Elephant's and KKR's significant rollovers placed them on the Merger's buy-side—and thus conflicted—alongside Vista, requiring Committee-conflict disclosure. Indeed, the Proxy identified Elephant, KKR and their affiliated KnowBe4 directors—along with Vista-related entities and Sjouwerman (*i.e.*, the other Rollover Group member)—as "Purchaser Filing Parties" under Rule 13e-3.[54]

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[51] SSKB4 Br. 26-27. *See also* SSKB4 Br. 22.
[52] SSKB4 Br. 25 (emphasis in original).
[53] *See supra* n.6.
[54] A0260-62; A0264; A0401-03.

Defendants falsely proclaim "there is no requirement to disclose a supposed conflict with a non-controlling, minority stockholder."[55] Yet two sentences later, Defendants concede: "'It is theoretically possible that holdings in a rollover stockholder standing alone would create a potential conflict of interest.'"[56] Faced with that reality, Defendants nevertheless deem Elephant and KKR's rollover-based conflict irrelevant because it purportedly did not undermine the process. That argument fails.

In *Brookfield*, this Court confirmed that assessing conflict-based disclosure failures "is a different" inquiry—and occurs independently—from assessing the conflict's *impact*.[57] Thus, "[i]t does not matter whether the financial advisor's opinion was ultimately influenced by the conflict…*the presence of an undisclosed conflict is still significant*[.]"[58] Here, by condoning the omission of conflict-related facts based on the conflict's presumed *non-impact*, the Trial Court repeated its *Brookfield* error.

Recognizing this, Defendants concede there is no "*per se* rule that only conflicts that affect the deal process are material."[59] Contravening that concession

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[55] SSKB4 Br. 26.
[56] *Id*.
[57] *Brookfield*, 314 A.3d at 1131.
[58] *Id*.
[59] SSKB4 Br. 27.

and *Brookfield*, Defendants nevertheless defend their concealment of the Committee's at-least *potential* conflicts because "there is no conceivable scenario" where the conflicts "could have undermined the negotiation process" or "affect[ed] the deal[,]" arguing Elephant and KKR were purportedly fully firewalled from the process.[60] Wrong. Among other things: (i) Elephant's and KKR's direct discussions with Vista pre-dated and launched the process[61]; (ii) the Committee sought and received Elephant's and KKR's views on pricing and valuation[62]; (iii) Vista's offers were conditioned on the presence and quantum of Elephant's and KKR's rollovers[63]; and (iv) Elephant and KKR discussed with the Committee their views of Vista's proposals and counterproposals.[64] As the Committee acknowledged in rationalizing their involvement, "KKR and Elephant…controlled a majority of the Company's voting power," and KnowBe4 "would not be able to consummate" a transaction "without their consent."[65]

Defendants' insistence that *the Committee*—rather than Elephant and KKR—directly negotiated with Vista *proves* the materiality of the Committee members' undisclosed relationships with Elephant and KKR.

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[60] SSKB4 Br. 26-28.
[61] OB 8-9.
[62] A1323-24.
[63] A1032-33; A0135-36; A0304-05.
[64] *Id.*
[65] A1423.

3. Defendants' Remaining Arguments Defy Applicable Standards and the Record

Defendants' director-specific arguments likewise fail.

a. Venkataraman

Unable to deny Venkataraman's ongoing investing relationships with conflicted Elephant and KKR, Defendants claim that "the investments had [no] relation to KnowBe4 or the Merger."[66] This ignores that the Defendant-curated pleading stage record conceals the specifics of those investments, including the specific funds in which Venkataraman invested. But even if true, that merely underscores that Venkataraman's potentially conflicting relationships with Elephant and KKR transcend the Company and Merger.

Defendants' reliance on Venkataraman's purported "'significant economic incentive to maximize the deal value'"[67] backfires. Defendants omit that the "roughly $37 million" "Venkataraman received…in the Merger" included $4.6 million in unvested—*and thus at-risk*—restricted stock units ("RSUs") that the Merger accelerated.[68] That non-ratable incentive to consummate the Merger—even if at a less-than-value-maximizing price—aligned him with Elephant and KKR (and Vista) given their non-ratable buy-side interests in the Merger.

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[66] SSKB4 Br. 28.
[67] SSKB4 Br. 30-31.
[68] A0053-54(¶26).

Finally, as noted *supra*, Delaware has soundly rejected Defendants' "net seller" argument.[69]

b. Klausmeyer

The Klausmeyer-related omissions quintessentially trigger the partial disclosure doctrine. The Board affirmatively "cho[se]…to discuss"[70] Klausmeyer's non-KnowBe4 directorships, thus bolstering his claimed independence by falsely suggesting professional roles and income sources *unrelated* to Vista and KKR. Omitting Vista and KKR's connections to those companies fostered the "distorted impression"[71] that those directorships *enhanced* Klausmeyer's independence. Defendants ignore that doctrine, instead citing inapposite precedent and observing that Klausmeyer "had $6.1 million of stock options *that vested* in connection with the Merger."[72] As with Venkataraman, that non-ratable benefit exacerbates—rather than eliminates—Klausmeyer's conflict.

c. Watzinger

Defendants assert "there was no error as to the other directors, and thus no error to Watzinger."[73] The first clause of that assertion fails, so the second does too.

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[69] *See supra* n.12.
[70] *Appel*, 180 A.3d at 1064.
[71] *Id.*
[72] SSKB4 Br. 33 n.8 (emphasis added).
[73] SSKB4 Br. 35.

Again ignoring the partial disclosure doctrine, Defendants question the materiality of Watzinger's KKR investments.[74] Standing alone, the investments' identification and discussion as potential Merger conflicts during the July 13 meeting satisfies the liberal reasonable conceivability standard.

Finally, Watzinger's "approximately $3.8 million of stock options that vested in connection with the Merger"[75] likewise exacerbates—not eliminates—his conflicts.

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

Morgan Stanley's "central role"—and characterization in the Proxy as "independent"—entitled stockholders to "full disclosure of [Morgan Stanley's]… *potential* conflicts."[76] Yet the Proxy improperly omitted Morgan Stanley's ~$550M of investments in KKR-related entities.

Defendants' counterarguments fail.

First, Defendants suggest it sufficed for the Proxy to disclose that Morgan Stanley "may" have invested in KKR-related entities, without disclosing the

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[74] *Id*.
[75] SSKB4 Br. 36, n.9.
[76] *See 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)).

investment amount.[77] This Court rejected that very argument in *Brookfield*[78] and *Inovalon.*[79]

Second, Defendants assert that Morgan Stanley invested some unspecified fraction of the ~$550M through client accounts, rather than directly.[80] But Defendants conceded below[81]—and the Trial Court acknowledged[82]—that Morgan Stanley *directly* invested 100% of its $350M KKR portfolio company investments, and Defendants never identify the fraction of Morgan Stanley's $200M investments in KKR & Co. that purportedly involved client accounts. More fundamentally, as the Trial Court recognized, because Defendants' fact-intensive argument defies Plaintiffs' well-pled pleading stage allegations, "the court must accept Plaintiffs' allegations as true for purposes of this motion[.]"[83]

Third, Defendants—like the Trial Court—improperly confine *Brookfield* and *Inovalon* to acquirer-only conflicts, proclaiming Morgan Stanley's KKR-related conflicts categorically irrelevant because KKR was merely a "minority, non-

[77] SSKB4 Br. 37.
[78] 314 A.3d at 1133 ("The use of 'may' in the Proxy is misleading because Morgan Stanley had indeed already invested nearly half a billion dollars.").
[79] 319 A.3d at 294.
[80] SSKB4 Br. 37 & n.10.
[81] A1537 n.4.
[82] Op. at 39-40, n.127.
[83] *Id*.

controlling stockholder"[84] and "not even involved in negotiations."[85] That argument again ignores that KKR's rollover placed it on the Merger's buy-side alongside Vista[86]; KKR's active, open, and persistent involvement in the Merger process[87]; and that Defendants tacitly conceded the relevance of Morgan Stanley-KKR conflicts by disclosing *other* Morgan Stanley-KKR conflicts in the Proxy.[88] Defendants also disregard that *Brookfield* actually stands for the "great importance" of stockholders "understand[ing] what factors *might* influence the financial advisor's analytical efforts."[89] Similarly, in *Inovalon*—which reversed the same Trial Court based on failures to disclose potential conflicts between the committee's financial advisors and minority members of an equity consortium with whom the financial advisors never directly negotiated—this Court confirmed that "special committee[] advisor[] conflicts" are "uniquely important considerations for minority stockholders[.]"[90]

C. KKR's Dramatic Rollover Increase Upon Learning the Merger Price Would Be Unexpectedly Low Was Material

After planning for months to roll over $150M-200M of KnowBe4 equity based on Morgan Stanley and the Committee's Merger price guidance, KKR—

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[84] SSKB4 Br. at 38.
[85] SSKB4 Br. at 39-40.
[86] *See supra* I.A.2.
[87] *See supra* 2 & n.6.
[88] A0328.
[89] 314 A.3d at 1132.
[90] 319 A.3d at 292.

KnowBe4's second-largest stockholder—increased its rollover to $300M upon learning the Merger price would be meaningfully lower than that guidance. KKR's dramatic rollover increase (and corresponding reduction of the shares it would sell at the unexpectedly low cash-out price) directly informs the Merger price's fairness, requiring disclosure.[91]

Defendants' arguments fail.

First, Defendants concede the Proxy disclosed neither the existence nor size of KKR's rollover increase, but conclusorily claim "extensive [other] disclosures" regarding the rollover.[92] "Extensive" disclosures regarding KKR's rollover do not excuse omitting the dramatic increase: they trigger the partial disclosure doctrine, *enhancing* the obligation to disclose that increase.

Second, as explained in Plaintiffs' Opening Brief,[93] neither *Inovalon* nor *Adolf*[94] concerned a *change* in rollover amount (let alone the quantum of such change), and thus are inapposite. Defendants assert "*Adolf* did not discuss any such

[91] *See, e.g.*, *Gilmartin v. Adobe Res. Corp.*, 1992 WL 71510, at *10 (Del. Ch. Apr. 6, 1992); *Eisenberg*, 537 A.2d at 1059; *Appel*, 180 A.3d at 1057-58 ("[T]he founder and Chairman's views regarding the wisdom of selling the company were ones that reasonable stockholders would have found material.").
[92] SSKB4 Br. 42.
[93] OB 42-44.
[94] *Anchorage Police & Fire Ret. Sys. v. Adolf*, 2025 WL 1000153, at *1 (Del. Ch. Apr. 3, 2025).

change because it determined that such detail was not required."[95] False. *Adolf* did not and could not make any such "determin[ation]" because there was no rollover increase—or argument related thereto—upon which to make one. And even if Defendants' reimagining of *Inovalon*'s "key holding"[96] were accurate (it is not), their assertion that this case and *Inovalon* involve "precisely the [same] allegedly withheld fact"[97] cannot possibly be true when the relevant disclosure claim in *Inovalon* did not involve any change in any rollover amount.

Finally, Defendants' dismissal of KKR's $150M-200M intended rollover as merely a "preliminary estimate"[98] given when KKR *first* stated that long-planned range ignores and defies Plaintiffs' well-pled allegations, including that:

- KKR communicated $150M-200M in July and reiterated it in mid-September 2022, while Morgan Stanley and the Committee were projecting a Merger price materially *above* $25 based on discussions with Vista.[99]

- When Vista offered just $24 per share and warned it "would not be able to move significantly," KKR immediately began reevaluating its rollover amount.[100]

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[95] SSKB4 Br. 43.
[96] *Id*.
[97] *Id*.
[98] SSKB4 Br. 42 & 44.
[99] *See* OB 39 & n.179.
[100] A0127(¶240), A0130(¶251).

- 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. [101]

Rather than confronting those well-pled allegations—and the glaring inference that the reduced Merger price triggered KKR's rollover increase—Defendants falsely dismiss them as "rampant speculation."[102] Having "extensive[ly] disclos[ed]"[103] KKR's rollover and certain facts related thereto, the Board was prohibited under the partial disclosure doctrine from omitting the fact and amount of KKR's increase. Defendants' citation to cases involving completely different facts and holdings changes nothing.[104]

[101] A0134(¶260).
[102] SSKB4 Br. 45.
[103] SSKB4 Br. 42.
[104] *Arnold v. Society for Savings Bancorp, Inc.* concerned an investment advisor's "overly optimistic per share figure," not a major stockholder's specific and substantial increase to a reiterated rollover commitment upon learning of a lower-than-expected price. 650 A.2d 1270, 1282 (Del. 1994). The "special facts" standard applied in *In re Wayport, Inc. Litigation* supports Plaintiffs here, as KKR's rollover amount "bec[ame] material" when the rollover's price and size were agreed upon. *See* 76 A.3d 296, 321 (Del. Ch. 2013).

II. ELEPHANT, KKR AND SJOUWERMAN CONSTITUTED A CONTROL GROUP

Defendants badly mischaracterize *Sheldon*, *Frank*, and *Hansen*[105] in an effort to downplay Plaintiffs' control group allegations.[106] They also fail to excuse the Trial Court's rejection of precedent crediting specific allegations as supporting a control group inference.

First, by urgently—but falsely—insisting that *Sheldon* overruled *Frank*, Defendants effectively concede the Trial Court repudiated the most probative precedent.[107] *Frank* applied the same control group standard that *Sheldon* later reaffirmed: members must be "'connected in some legally significant way—*e.g.*, by contract, common ownership, agreement, or other arrangement…to work together toward a shared goal.'"[108]

Frank's application of the correct legal standard (reaffirmed in *Sheldon*) dooms Defendants' position. Defendants' attempted differentiation of *Frank* rests

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[105] *In re Hansen Med., Inc. S'holders Litig.*, 2018 WL 3025525 (Del. Ch. June 18, 2018).

[106] *See* Appellees Jeremiah Daly, 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.'s Answering Brief ("Elephant Br.") at 16-20 (Trans. ID 80586697).

[107] Elephant Br. 20 ("If, as Plaintiffs suggest, *Frank* were the applicable standard…").

[108] *Frank*, 2012 WL 1096090, at *8; *Sheldon*, 220 A.3d at 251-52 (articulating substantively identical standard).

on facts absent from *Frank*'s control group analysis. *Frank* found a control group based on just three facts: "contemporaneous[] ent[ry] into the Voting Agreements, the Exchange Agreements, and the Employment Agreements."[109] Applying the same standard as *Sheldon*, *Frank* held these contemporaneous agreements "connected [the putative control group] in a legally significant way"[110]—*i.e.*, not merely "parallel conduct."[111]

The Trial Court's single sentence about *Frank* did not grapple with *Frank*'s analysis—it merely quoted as a purported distinction a footnoted summary of the *Frank* complaint's conclusory allegation that "members of the alleged control group "*act[ed] together* to attain unique benefits for themselves at the expense of [the company's] other stockholders."[112] The Trial Court also failed to recognize that its categorical position on support and rollover agreements contravenes *Hansen*.[113]

Second, Defendants' attempt to differentiate *Frank*'s employment agreements as providing unique benefits to the control group likewise fails.[114] The relevant unique benefit in *Frank* was not a "quid pro quo" stemming from employment, but

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[109] *Frank*, 2012 WL 1096090, at *8; *Hansen*, 2018 WL 3025525, at *6 (confirming narrow basis for *Frank*'s control holding).
[110] *Frank*, 2012 WL 1096090, at *8.
[111] *See* Elephant Br. 20.
[112] Op. at 29 (emphasis added).
[113] OB 49-50; *Hansen*, 2018 WL 3025525 at *8.
[114] *See* Elephant Br. 19.

rather the same unique benefit alleged here: "the exclusive opportunity to receive equity in the surviving entity."[115] Moreover, even if the post-close executive employment agreements in *Frank* are a distinguishing feature, they are *less* indicative of control group coordination than the down-convert agreements present here (and absent from *Frank*), particularly given Plaintiffs' additional allegations regarding, *e.g.*, the Rollover Group' (furtive) meetings with Vista, and the Merger parties' treatment of the Rollover Group as controllers.[116]

Third, in holding that the Rollover Group's entry into technically separate agreements with Vista disproves control, the Trial Court again contradicted *Frank* and *Hansen*, where separate support and rollover agreements evidenced control groups.[117] *Hansen* explicitly rejected contrary arguments.[118] Defendants then claim that *Adolf, van der Fluit v. Yates*,[119] and *Dubroff v. Wren Hldgs., LLC*,[120] support a finding their efforts were uncoordinated,[121] but unlike *Frank* and *Hansen*, those cases do not address majority stockholders' rollovers or analogous facts. And

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[115] *Frank v. Elgamal*, 2014 WL 957550, at *28 (Del. Ch. Mar. 10, 2014); *see also Hansen*, 2018 WL 3025525, at *9 (rollover opportunity was "a non-ratable benefit").
[116] *See* OB 48-49. While Defendants suggest the employment agreements were integral to *Frank*'s ruling, *Hansen* rejected differentiation on those very grounds. *Hansen*, 2018 WL 3025525, at *9.
[117] *See* OB 49-50; *Hansen*, 2018 WL 3025525, *8.
[118] *Id*.
[119] 2017 WL 5953514 (Del. Ch. Nov. 30, 2017).
[120] 2009 WL 1478697 (Del. Ch. May 22, 2009).
[121] *See* Elephant Br. 17-18.

contrary to Defendants' sky-is-falling argument, reversal would not mean every rollover and support scenario compels a control group finding, particularly given Plaintiffs' additional well-pled allegations establishing control here.

Similarly, the Trial Court contradicted *Frank*'s and *Hansen*'s findings that "contemporaneous[]" entry into separate rollover and support agreements indicates a control group, reasoning that entry into such agreements is "typically" driven by deal timing.[122] That generic assertion ignores Plaintiffs' well-pled allegations, including that the agreements were integral to the Merger, and were conceived before the process even began and/or discussed throughout the process rather than emerging at the eleventh-hour in connection with typical late-stage financing commitments.[123] Defendants' response is to cherry-pick and dispute facts to incorrectly assert that rollover participation was not baked into Vista's bargaining.[124] Defendants reference Vista's stray pre-negotiation assertion that it did not expect to condition a transaction on any "*specific*" rollover expectation,[125] but: (i) Vista's initial offer contemplated a rollover and *MFW*-conditioning[126]; (ii) Vista's second offer expressly "[r]equire[d] at least $675MM rollover from

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[122] *Compare* Op. at 25-26 *with Frank*, 2012 WL 1096090, at *8 *and Hansen*, 2018 WL 3025525, at *7.
[123] OB 50.
[124] *See* Elephant Br. 20-21.
[125] Elephant Br. 21 (emphasis added).
[126] A0127(¶240).

Elephant/KKR/[Sjouwerman;]"[127]; and (iii) Vista's final price agreement was expressly conditioned on a $682M rollover by KKR, Elephant, and Sjouwerman.[128]

Fourth, in finding Elephant and KKR's strategies uncoordinated, the Trial Court drew improper pro-Defendant inferences.[129] *Sheldon* requires only a legally significant connection, not evidence of a coordinated transaction strategy (let alone at the pleading stage).[130] In finding control groups, none of *Sheldon*, *Frank*, or *Hansen* required lockstep approaches to rollover amounts nor the additional minutiae Defendants attempt to impose.[131] Defendants cite no precedent requiring coordinated strategy to find *transaction-specific* control, and their citation to *Yates* does not help them.[132] There, the Court noted the absence of allegations of generalized action in "unison" in assessing claims of *general control*, not transaction-specific control.[133] Nor is "extensive and longstanding entanglement" a requirement of transaction-specific control, as Defendants suggest.[134]

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[127] A0132-33(¶256).
[128] A0136(¶266).
[129] OB 50-51.
[130] *See* Op. at 25-26; *Sheldon*, 220 A.3d at 251-52.
[131] Elephant Br. 25.
[132] Elephant Br. 25-26; *Yates*, 2017 WL 5953514, at *6.
[133] *Yates*, 2017 WL 5953514, at *6; *see also Patel v. Duncan*, 2021 WL 4482157, at *15 (Del. Ch. Sept. 30, 2021), as corrected (Oct. 4, 2021) (transaction-specific allegations alone can establish pleading-stage control).
[134] Elephant Br. 27. Indeed, under Defendants' incorrect conception, majority stockholders could effect a minority freezeout without being deemed transaction-specific controllers absent "extensive and longstanding entanglement."

Defendants' claimed strategic differences amongst the Rollover Group members also fail scrutiny.[135] For example, in highlighting that Elephant agreed to a fixed rollover whereas KKR retained "'sole discretion'" to modify its rollover size,[136] Defendants ignore that KKR had an economically fixed rollover obligation requiring it to compensate any rollover share reduction with equivalent cash, and Elephant and KKR each rolled 46% of their equity.[137] Defendants' unsubstantiated assertions regarding separate *negotiations* between Vista and each Rollover Stockholder defy Plaintiffs' well-pled allegations.[138]

Fifth, Defendants' assertion that Vista's proposal of the down-conversion disproves the Rollover Group' coordination[139] also fails: they coordinated *with Vista* to acquire KnowBe4. Reducing their overall voting power to circumvent the minority vote was completely irrational—and would only achieve its goal—if all three Rollover Group down-converted together. And contrary to Defendants' assertion, *Sheldon* does not "foreclose" Plaintiffs' position, as *Sheldon* did not involve an orchestrated down-conversion to accomplish a non-ratable freezeout and

[135] *See* Elephant Br. 24-26.
[136] Elephant Br. 24-25.
[137] A1114-15.
[138] *See* Elephant Br. 4, 10-11.
[139] Elephant Br. 23.

this Court did not directly analyze the down-convert given the other pleading deficiencies.

Finally, Defendants unsuccessfully defend the Trial Court's erroneous failure to credit the Merger participants' uniform treatment of the Rollover Group as controllers as indicia of a control group.[140] Attempting to rehabilitate the Trial Court's unattributed presumption that this treatment was merely prophylactic, Defendants identify three unrelated footnotes that fail to support the prophylaxis theory.[141] Defendants ignore *Garfield*'s finding that the participants' treatment of the alleged control group evidenced control.[142] Similarly, Defendants' recitation of irrelevant facts from *MH Haberkorn* elides the critical point that there, the Court held that a decision to conduct a majority-of-the-minority vote "'supported an inference that [there was] a control group.'"[143] Defendants do not—and cannot—explain why the Trial Court rejected factors considered in precedent as evidencing control, and instead implausibly assert that reversal could cause future transaction participants to forsake extremely valuable transaction safe harbors.[144]

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[140] OB 51-52.
[141] *See* Elephant Br. 28 (citing Op. at 27 nn.78-80).
[142] *Garfield v. BlackRock Mortg. Ventures, LLC*, 2019 WL 7168004, at *10 (Del. Ch. Dec. 20, 2019).
[143] *See* OB 52 (discussing *MH Haberkorn 2006 Tr. v. Empire Resorts*, Inc., C.A. No. 2020-0619-KSJM (Del. Ch. July 23, 2021) (TRANSCRIPT)).
[144] Elephant Br. 27-28.

CONCLUSION

This Court should reverse.

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