EFiled: Oct 16 2025 02:25PM EDT
Filing ID 77318873
Case Number 375,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ARC GLOBAL INVESTMENTS II LLC, Plaintiff Below, Appellant/Cross Appellee, v. DIGITAL WORLD ACQUISITION CORP., Defendant Below, Appellee/Cross Appellant.	No. 375, 2025 Court Below: Court of Chancery of the State of Delaware C.A. No. 2024-0186-LWW **REDACTED PUBLIC VERSION** **Filed: October 16, 2025**

APPELLANT'S OPENING BRIEF

Matthew D. Perri (#6066)
Daniel E. Kaprow (#6295)
Andrew L. Milam (#6564)
Christine J. Chen (#7499)
Elizabeth J. Freud (#6803)
RICHARDS, LAYTON & FINGER, P.A.
920 North King Street
Wilmington, DE 19801
(302) 651-7700
perri@rlf.com
kaprow@rlf.com
milam@rlf.com
chen@rlf.com
freud@rlf.com

Attorneys for Plaintiff Below, Appellant/Cross Appellee ARC Global Investments II LLC

Dated: October 1, 2025

TABLE OF CONTENTS

TABLE OF CITATIONS

Page(s)

Cases

Statutes and Rules

Other Authorities

NATURE OF PROCEEDINGS

This appeal centers on six words in a corporation's certificate of incorporation: "seller in the initial Business Combination." The parties dispute whether creditors of the target company were "sellers" in a de-SPAC transaction. Because they were not, plaintiff-below, appellant/cross appellee ARC Global Investments II LLC ("ARC"), and all former Class B stockholders of Digital World Acquisition Corp. ("DWAC"), were entitled to anti-dilution protection and additional shares.

ARC was the sponsor of DWAC, a special purpose acquisition company ("SPAC"). ARC's DWAC stock was primarily in the form of Class B Common Stock. Using a ratio generated by a formula (the "Conversion Ratio") in DWAC's charter, all Class B Common Stock was to convert into Class A Common Stock upon DWAC's consummation of a business combination with Trump Media & Technology Group ("TMTG").

DWAC first attempted to ignore the Conversion Ratio—claiming it would be a 1:1 exchange. After significant back-and-forth, including a surreptitious filing by DWAC to avoid Delaware, DWAC used 1.348:1 as the Conversion Ratio. The trial court found the proper Conversion Ratio was approximately 1.49:1 and that DWAC had breached its charter. The trial court was correct that DWAC breached its charter, but was incorrect regarding the magnitude of the breach.

Specifically, before the business combination closed, the target company issued debt in the form of convertible notes. In a decision designed to dilute ARC, among others, DWAC agreed to pay TMTG's creditors additional equity in the business combination. Setting aside that a decision to punish Class B stockholders was a breach of the implied covenant, DWAC contends, and the trial court agreed, that those target-company creditors, who held convertible notes, were "sellers" under DWAC's charter. The term sellers does not refer to creditors. The trial court therefore erred in concluding that creditors could be sellers under the charter.

The trial court also erred in concluding that these TMTG creditors were sellers because they purportedly became TMTG stockholders. The trial court found that "sellers" encompassed TMTG creditors because such creditors supposedly became TMTG stockholders before receiving DWAC stock, largely relying on a letter from DWAC's CEO to DWAC's transfer agent purportedly attaching a spreadsheet listing in brackets shares that supposedly were, or were to be, issued to the TMTG noteholders. The trial court should have never considered that "document," which DWAC failed to timely produce (and still has never produced in full). During discovery, ARC obtained through a subpoena to DWAC's transfer agent a copy of only the letter *without* the attachment—the only portion reflecting the supposed or anticipated issuance of TMTG stock.

Thus, the only support for concluding that TMTG noteholders were sellers was withheld from ARC, unexamined by any witness, and considered by the trial court over ARC's timely objection. DWAC in fact improperly relied upon the unproduced attachment as the sole evidence supporting its argument that TMTG noteholders received TMTG stock in its answering pre-trial brief, in response to ARC's opening pre-trial brief saying there was no support for DWAC's position. But, as explained in ARC's pre-trial reply brief (the last trial brief submitted by anyone), DWAC's key document used to supposedly refute ARC's position did not exist in the record, in any form. Thus, the "document" the trial court relied upon was produced by DWAC only *after* all trial briefs were submitted. No one has ever produced drafts of the letter or spreadsheet, communications about the letter or spreadsheet, documents showing the letter or spreadsheet were sent, a version of the letter and purported attachment combined, a version of the attachment without brackets, or any relevant metadata for either document. No witness was asked about the document. ARC did not even have the document during depositions. ARC moved to exclude the document. The trial court denied ARC's motion and, instead, relied upon it as the sole contemporaneous evidence arguably showing that any conversion of the TMTG notes to TMTG stock, or any issuance of TMTG stock to the noteholders, had occurred.

In short, the term "sellers" refers to target-company stockholders who sold stock in the business combination. Even if that could include creditors who converted into target-company stockholders in the transaction itself, there is zero competent evidence such a conversion occurred. The trial court's decision therefore should be partially reversed. Specific performance is no longer adequate—the market value of the stock has declined—and this Court should therefore remand for further proceedings on a remedy.

SUMMARY OF ARGUMENT

1. The trial court erred as a matter of law in finding that TMTG's noteholders were "seller[s] in the initial Business Combination" under DWAC's charter. The term "sellers" in DWAC's charter refers to target-company stockholders who sold stock pursuant to the Merger Agreement. Creditors do not "sell" loans to the acquirer. To the extent the term is ambiguous, because the charter was drafted in advance of the deal structure, *contra proferentum* applies against DWAC.

2. Even if "seller" could include TMTG noteholders had they become TMTG stockholders, the trial court erred in finding that occurred despite a lack of competent evidence. If it had occurred, DWAC, as the 100% owner of TMTG post-transaction would have been the party possessing such evidence. The trial court erred as a matter of law in requiring ARC to prove a negative and abused its discretion in denying ARC's motion to exclude a standalone, apparent draft spreadsheet that DWAC provided after ARC filed its pre-trial reply brief. The trial court's finding is not supported by evidence, let alone credible and sufficient evidence, and thus must be reversed.

STATEMENT OF FACTS

A. Parties

DWAC was incorporated in Delaware in December 2020. Ex. A at 3. On October 20, 2021, DWAC entered into an Agreement and Plan of Merger (the "Merger Agreement") with TMTG. *Id.* at 7. The transaction (the "Business Combination") closed on March 25, 2024. *Id.* at 15. After the closing, DWAC changed its name to "Trump Media & Technology Group Corp." *Id.*[1]

Plaintiff-below, appellant/cross appellee ARC, a Delaware limited liability company, was the sponsor of DWAC. *Id.* at 3. Before the Business Combination, ARC held 5,490,000 shares of DWAC Class B Common Stock, which constituted 76.4% of the then-outstanding shares of Class B Common Stock. *See id.* at 3 & n.5.

Non-party Patrick Orlando has been the managing member of ARC since May 2021. A319, ¶12. He served as CEO of DWAC from May 2021 to March 2023 and was a director of DWAC until the Business Combination. *Id.*

B. DWAC's Charter

ARC held an approximate 20% interest in DWAC after DWAC's initial public offering ("IPO"). Ex. A at 3. On September 2, 2021, in connection with the IPO, DWAC filed its Amended and Restated Certificate of Incorporation with the

[1] This brief refers to the publicly traded entity as DWAC and its pre-closing private counterparty, which is a wholly owned subsidiary of DWAC, as TMTG.

Secretary of the State of Delaware (the "Charter"). Ex. A at 4; A569. The Charter provided that DWAC would have two classes of common stock, Class A and Class B, the latter of which was to convert to Class A stock when DWAC completed a business combination. Ex. A at 4-5. To protect Class B stockholders, the Charter also included an anti-dilution formula. Ex. A at 5-6; A572-73, § 4.3(b)(ii). Specifically, Section 4.3(b)(ii) of DWAC's Charter provided that:

> [I]n the case that additional shares of Class A Common Stock, or Equity-linked Securities (as defined below), are issued or deemed issued in excess of the amounts sold in the Corporation's initial public offering of securities (the "Offering"), in connection with the closing of the Corporation's initial Business Combination, all issued and outstanding shares of Class B Common Stock shall automatically convert into shares of Class A Common Stock at the time of the closing of the initial Business Combination at a ratio for which:
>
> - the numerator shall be equal to the sum of (A) 25% of all shares of Class A Common Stock issued or issuable (upon the conversion or exercise of any Equity-linked Securities or otherwise) in each case by the Corporation related to or in connection with the consummation of the initial Business Combination (excluding any securities issued or issuable to any seller in the initial Business Combination and any private placement units (or underlying securities) issued to ARC Global Investments II LLC (the "Sponsor") or its affiliates upon conversion of loans made to the Corporation) plus (B) the number of shares of Class B Common Stock issued and outstanding prior to the closing of the initial Business Combination; and
>
> - the denominator shall be the number of shares of Class B Common Stock issued and outstanding prior to the closing of the initial Business Combination.

A572-73, § 4.3(b)(ii).

By the time of trial, the parties did not dispute that the Business Combination triggered Section 4.3(b)(ii), nor do they dispute the calculation of the denominator. Ex. A at 1-2. The dispute between the parties centers on the calculation of the numerator (the "Numerator")—and, in particular, the interpretation of the exclusion of "securities issued or issuable to any seller in the Business Combination." Ex. A at 25-26; *see also id.* at 25-28, 33.

C. The Business Combination

On October 20, 2021, DWAC entered into the Merger Agreement. *Id.* at 7. Pursuant to the Merger Agreement, a subsidiary of DWAC was to merge with and into TMTG, with TMTG surviving as a wholly owned subsidiary of DWAC. Ex. A at 15. TMTG's stockholders were to receive DWAC shares in exchange for TMTG equity. A460, §§ 1.8, 1.9(a).

In May 2022, the Merger Agreement was amended ("First Amendment") so that holders of promissory notes ("TMTG Noteholders") issued by TMTG ("TMTG Convertible Notes") would receive DWAC stock in the Business Combination in cancelation of their notes. Ex. A at 7. The First Amendment did not increase the number of shares that DWAC would pay. Indeed, the amendment was to Section 1.9 of the Merger Agreement, titled "Effect of Merger on Company Securities," rather than to Section 1.8, which is titled "Merger Consideration." A546-47. As a result, TMTG noteholders would receive DWAC shares that were being paid as part of the

Merger consideration and TMTG stockholders would receive a correspondingly smaller amount of consideration, *id.*—effectively causing TMTG stockholders to repay the TMTG Convertible Notes.

The Business Combination did not close until March 2024. After the Merger Agreement was announced, DWAC's S-4 became stuck in a regulatory morass due to regulatory investigations, and Orlando was terminated as DWAC's Chairman and CEO in March 2023. A680-83; *see also* A125-26. The SEC approved a settlement on July 20, 2023. A683.

TMTG sought to renegotiate the Merger Agreement with DWAC's new CEO, Eric Swider. *See* A552-54. On August 9, 2023, the parties again agreed to amend the Merger Agreement ("Second Amendment"). A588-98. This change, while appearing to allow TMTG to take on additional debt, was apparently meant to dilute ARC by changing how the consideration would be paid. DWAC and TMTG agreed the amendment would provide that "all shares issued pursuant to TMTG's convertible notes will be registered and issued to the holders contemporaneously with the Closing, and the issuance of any such shares will be dilutive to all of the Surviving Corporation's equity holders, including, without limitation, the Sponsors [ARC], DWAC's former CEO [Orlando], and the Public Stockholders." A553. This understanding was never conveyed to Class B stockholders.

The Second Amendment purported to create an extra step to close the Business Combination: the TMTG Convertible Notes would, instead of being paid directly in DWAC stock, first "automatically convert immediately prior to the Effective Time [of the Business Combination] into a number of shares of [TMTG] Common Stock" that would then be converted into DWAC stock. A589. TMTG Noteholders would theoretically become TMTG stockholders—an event that would never actually occur—and then exchange TMTG stock for DWAC stock.

As the Business Combination drew near, DWAC told ARC that it would use a 1:1 conversion ratio. A583. To better understand DWAC's calculation, Orlando sought to inspect DWAC's books and records. *See* A186-87. DWAC used Orlando's request for information as an excuse to exclude him from all Business Combination-related discussions.

On February 16, 2024, DWAC filed a proxy statement ("Merger Proxy") with the SEC and scheduled a special meeting of stockholders. Ex. A at 12. The Merger Proxy disclosed that DWAC would issue "up to 8,369,509 shares" to TMTG's Noteholders "upon conversion of outstanding TMTG Convertible Notes immediately prior to the Effective Time in connection with the Closing." Ex. A at 13. These 8,369,509 shares should have been included in the calculation of the Conversion Ratio's Numerator, pursuant to the Charter. *See infra* § I. Instead, the Merger Proxy made clear that they would not be, and disclosed DWAC calculated

the Conversion Ratio at 1.34:1 subject to an unexplained ability to adjust. Ex. A at 13-14.

After Orlando caused DWAC to set a Conversion Ratio, but not yet the proper one, ARC was forced to escalate. ARC wrote to DWAC's counsel to try to resolve the dispute. A599-621. DWAC's counsel responded that they were available to speak the following afternoon. A628. When ARC agreed to wait to file its complaint, DWAC's counsel abruptly changed course and became available to speak only days later. A626-27. Given the expedited situation, ARC agreed to speak, but noted it would file its complaint in the interim. A626. DWAC's counsel responded with baseless threats of sanctions against ARC and its counsel and refused to make himself available. A625. ARC could not delay. *Id.* Apparently realizing that inappropriate threats would not intimidate ARC, DWAC's counsel pivoted to requesting a professional courtesy due to a purported medical situation. A624. ARC relented. A622-24.

The next day, at 5:00 p.m., which was purportedly the earliest availability of counsel, the parties discussed a potential resolution. A622. Unbeknownst to ARC, during that call, while ARC withheld filing litigation in good faith at DWAC's request, DWAC preemptively filed a complaint in Florida. A635-61. While forum shopping, DWAC continued to assure ARC that the parties were making progress. A631-33. DWAC's inappropriately filed Florida complaint contradicted its Merger

Proxy and positions in Delaware, including by seeking a declaration on the precise Conversion Ratio notwithstanding that the transaction had not yet closed. A652-54.

DWAC then went silent until it served ARC's managing member while getting off the bus after chaperoning his daughter's school field trip. When ARC immediately filed its complaint and sought expedition, DWAC attempted to use its improperly filed complaint to argue this action was improper and refused to accept service. A662 ("No. We do NOT accept service. Your complaint is improper and should be withdrawn. As you know, these matters already are pending before the Court in Florida.").

D. This Litigation and the Path to Closing

ARC's February 29, 2024 complaint alleged that the Conversion Ratio—and specifically, the Numerator—as calculated by DWAC breached DWAC's Charter and that DWAC's directors breached their fiduciary duties in calculating it. A51-55. Specifically, ARC argued that the Numerator should include additional categories of shares and the Conversion Ratio should be 1.78:1. A44-45; A54; *see also* Ex. A at 16.

The next day, DWAC issued a Form 8-K disclosing a range for the Conversion Ratio, while purportedly retaining discretion to "find a different, lower conversion ratio" at closing. Ex. A at 14. The trial court expedited this action on March 5,

2024, and ordered DWAC to place into escrow shares as if the ratio were 2:1. *Id.* at 16.

ARC filed its opening pre-trial brief on May 29. A110-76. ARC's opening pre-trial brief emphasized the lack of evidence that DWAC or TMTG ever considered the TMTG Noteholders to be sellers or TMTG stockholders:

> [E]ven after Plaintiff successfully moved to compel against TMTG—who refused to search even a single custodian in this action—Plaintiff has not found any produced documents showing that any TMTG Noteholder was ever deemed a stockholder for even a second. Swider [DWAC's CEO] was not aware of any either. Swider Tr. 246:3-248:3. Defendants rely exclusively on the concept that the payment mechanisms in the Second Amendment contemplate a fleeting moment during the closing at which TMTG noteholders will be deemed for purposes of the payment mechanics, stockholders of TMTG.

A162-63.

In response, DWAC argued the TMTG Convertible Notes were actually converted, their holders were actually issued TMTG stock, and TMTG Noteholders thus were sellers. A298-306. As evidence, DWAC relied exclusively on: (1) a draft unsigned purported TMTG convertible note; (2) the Second Amendment; and (3) an unproduced, purported attachment (Annex D) to a March 25, 2024 instruction letter ("Transfer Agent Letter") directing DWAC's transfer agent to issue DWAC shares to the persons listed on Annex D to letter. A299-301 (citing JX318 (draft note); JX86 (Second Amendment); and JX329 (Transfer Agent Letter)). Annex D was not attached to the Transfer Agent Letter, which itself was only produced in response to

a third-party subpoena. A705-17; *see also* Ex. A at 28 n.122 ("Annex D was not included with the version of the letter produced by the transfer agent."). DWAC did not cite any Annex D in its brief. DWAC nevertheless contended that the TMTG Noteholders were listed in Annex D. A301 ("The individuals on Annex D included the former holders of TMTG Convertible Notes alongside the other TMTG stockholders." (citing only JX329, the Transfer Agent Letter)).

ARC's pre-trial reply brief explained that neither the Merger Agreement (as amended) nor the Transfer Agent Letter shows that any TMTG stock was issued to noteholders. A202-03; A222-25. The Second Amendment contemplated that notes would convert to TMTG stock before the closing of the Business Combination, but it does not provide any evidence that any TMTG stock issuance actually occurred. *Id.* The Transfer Agent Letter provides even less support. The relevant paragraph does not identify any TMTG Noteholders, let alone show that they were issued TMTG stock. A202-03. It merely directs DWAC's transfer agent to "[i]ssue an aggregate 94,739,894 shares of New Digital World common stock to the persons and in the amounts listed on the New Digital World Master Distload File attached as Annex D hereto, in book entry form." A203 (footnote omitted) (quoting JX329). Annex D, as ARC pointed out, was not actually produced with the letter or otherwise. *Id.*

Given the state of the record and the imminent paper-record trial, ARC again emphasized the lack of evidence on this key point in its pre-trial reply brief:

> [D]ocuments supporting the argument that any conversion occurred would be entirely within Defendants' control. None have been produced in discovery (even after motions to compel against TMTG and DWAC's counsel). The absence of such evidence meets Plaintiff's burden. *AB Stable VIII LLC v. Maps Hotels & Resorts One LLC*, 2020 WL 7024929, at *49 & n.191 (Del. Ch. Nov. 30, 2020) (collecting authority that a party need not prove a negative, especially when evidence would be in the opposing parties' control), *aff'd*, 268 A.3d 198 (Del. 2021); *see also* 29 Am. Jur. 2d *Evidence* § 173 ("Courts generally do not require litigants to prove a negative, because it cannot be done."). The record shows only that TMTG noteholders became DWAC stockholders. No evidence shows TMTG noteholders became TMTG stockholders.

A222-23.

The day after ARC filed its reply brief, DWAC attempted to backfill by sending a standalone Excel spreadsheet it claimed was Annex D ("Purported Annex D"). A687-96; *see also* A350, ¶ 26. Purported Annex D lists in brackets shares that supposedly were, or were to be, issued to the TMTG Noteholders on the date the Business Combination closed. A688. DWAC did not explain why the spreadsheet was not in its prior productions, the basis for its stated belief that the unproduced document had been included in the transfer agent's production (it had not), or why DWAC had not produced any other documents regarding the Transfer Agent Letter or Annex D. A350, ¶ 26. The spreadsheet's metadata raises more questions. It lists Scott Glabe, the general counsel of TMTG, as its document custodian—rather than

Swider, DWAC's then-CEO, who was a custodian and purportedly signed the Transfer Agent Letter. *Id.* No metadata or other produced documents indicated Purported Annex D was actually associated with the Transfer Agent Letter. A344-45, ¶¶ 8-9; A350, ¶ 27; A354-55, ¶ 35. ARC moved to exclude Purported Annex D and sought adverse inferences as a sanction. A341-56.

The case proceeded to a one-day trial on a paper record on July 29. Ex. A at 17. There was no post-trial briefing. A453.

On September 16, 2024, the trial court issued its post-trial opinion, finding the Conversion Ratio should be 1.4911:1, based on its finding that several categories of DWAC shares issued in connection with the Business Combination should have been included in the Numerator. Ex. A at 33. The trial court, however, determined that the DWAC shares exchanged for the TMTG Convertible Notes were properly excluded pursuant to Section 4.3(b)(ii) of the Charter, which excludes "securities issued or issuable to any seller in the [initial] Business Combination." *Id.* at 25-26, 25-28.[2]

In reaching its decision, the court denied ARC's motion to exclude, reaching three erroneous conclusions: "ARC first raised its theory that the TMTG

[2] Since the court excluded shares issued to the TMTG Noteholders from the Numerator, it did not resolve the parties' dispute as to the number of shares so issued. Ex. A at 26 n.113. Because the trial court erred in excluding these shares, *infra* §§ I-II, remand is required to resolve this issue.

Convertible Noteholders were not 'sellers' after discovery closed. It was on notice of the existence of Annex D for months, after receiving the letter referencing it in a production from the transfer agent. And it carries the burden of proof." *Id.* at 28 n.122. Based on the terms of a draft unsigned purported TMTG convertible note, the Second Amendment to the Merger Agreement, the Transfer Agent Letter, and the Purported Annex D thereto, the court determined that the TMTG Convertible Notes were converted "into TMTG shares 'immediately prior to the closing of' the business combination" and thus their holders were "sellers" for purposes of the Charter. *Id.* at 27, 27-28 & n.122. The trial court's calculation of the Conversion Ratio thus excluded from the Numerator the DWAC shares issued to the TMTG Noteholders. *Id.* at 33. This appeal followed.

ARGUMENT

I. THE TRIAL COURT ERRED IN CALCULATING THE NUMERATOR.

A. Question Presented

Did the trial court err in concluding that the provision "any seller in the initial Business Combination" in Section 4.3(b)(ii)(A) of DWAC's Charter encompassed the TMTG Noteholders, thus excluding DWAC shares issued to them from the calculation of the Numerator? This issue was preserved at: A125; A128-29; A134-36; A149-51; A159-63; A202-06; A221-27; A375; A379; A389-97; A449-52; *see also* Ex. A at 25-28, 33.

B. Scope of Review

The interpretation of contracts "involves legal questions and thus the standard of review is *de novo*." *Emmons v. Hartford Underwriters Ins. Co.*, 697 A.2d 742, 744 (Del. 1997).

C. Merits of Argument

The parties do not dispute that the Business Combination triggered Section 4.3(b)(ii) and the anti-dilution formula. Nor do they dispute the denominator. The dispute centers on the interpretation of the exclusion of "any securities issued or issuable to any seller in the initial Business Combination" from the Numerator in sub-clause (A) of the anti-dilution formula. A572, § 4.3(b)(ii). The trial court incorrectly concluded that this exclusion encompassed the TMTG Noteholders,

finding that "TMTG equity holders who received consideration for their shares in the business combination are 'sellers'" and that because, in the court's view, the TMTG Convertible Notes converted into TMTG stock immediately before closing, the noteholders constituted "sellers." *See* Ex. A at 26, 25-28.

This interpretation elevates form over substance, improperly draws definitional meaning from an accounting mechanic, *id.* at 27, and is inconsistent with the intended function of the Charter's anti-dilution protections. Even assuming the TMTG Noteholders' notes were converted and they were issued TMTG stock for a fleeting moment immediately before the closing—they did not, as detailed *infra* § II—the trial court erred in concluding that this turned creditors into "sellers" under DWAC's Charter.

1. Principles of Contract Interpretation

Delaware "adheres to the 'objective' theory of contracts, *i.e.* a contract's construction should be that which would be understood by an objective, reasonable third party." *Weinberg v. Waystar, Inc.*, 294 A.3d 1039, 1044 (Del. 2023). "Under the plain meaning rule of contract construction, if a contract is clear on its face, the Court should rely solely on the clear, literal meaning of the words." *Demetree v. Commonwealth Tr. Co.*, 1996 WL 494910, at *4 (Del. Ch. Aug. 27, 1996). Delaware courts "will read a contract as a whole and … will give each provision and term effect, so as not to render any part of the contract mere surplusage. [Delaware courts]

will not read a contract to render a provision or term 'meaningless or illusory.'" *Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) (internal quotation marks and footnote omitted). Delaware courts, however, in interpreting a contract also consider "the commercial context between the parties. In this regard, when assessing commercial context, the court may consider the parties' view of the overall transaction and associated descriptions of the transaction without running afoul of the parol evidence rule." *Greenstar IH Rep, LLC v. Tutor Perini Corp.*, 2019 WL 6525206, at *9 (Del. Ch. Dec. 4, 2019) (alterations, footnote, and internal quotation marks omitted), *aff'd*, 240 A.3d 1 (Del. 2020) (TABLE).

If the Court determines the Charter is ambiguous, then it should apply the doctrine of *contra proferentem* "to resolve ambiguities about the rights of investors in the governing instruments of business entities" in favor of the investors. *Shiftan v. Morgan Joseph Hldgs., Inc.*, 57 A.3d 928, 935-36 (Del. Ch. 2012) (collecting cases and recognizing that the "Supreme Court has frequently invoked this doctrine of contra proferentem to resolve ambiguities about the rights of investors in the governing instruments of business entities").

2. TMTG Noteholders were creditors, not sellers.

The TMTG Noteholders—creditors of the target company—were not "sellers" under DWAC's Charter. An accounting mechanic purportedly employed through the Business Combination to satisfy debt does not change that.

The plain language of Section 4.3(b)(ii) in the Charter shows that TMTG Noteholders were not sellers. "The Charter does not define 'seller.'" Ex. A at 26. Black's Law Dictionary does: "seller" is "a person who sells anything; the transferor of property in a contract of sale." *Seller*, BLACK'S LAW DICTIONARY (10th ed. 2014). DWAC agrees with this definition of seller, A299, and it supports ARC's interpretation. A seller is frequently defined by the property being sold; for example, a seller of apples is one who owns apples and is able to transfer them in a contract to sell apples. In the Business Combination, the property being sold was the ownership of TMTG. A460-62, §§ 1.8-1.9. TMTG Noteholders were not owners of TMTG at any time. It is undisputed that the TMTG Noteholders held *debt* and not *equity* at least until a fleeting moment immediately before the Business Combination closed. *See* A300-03.

The substance of the transaction should control: The TMTG Noteholders sold nothing. They loaned money to TMTG and received DWAC stock in satisfaction of that debt. They also never received any rights as TMTG stockholders. They did not vote on the transaction, have books-and-records or appraisal rights, or have a fiduciary relationship with TMTG. Construing these debtholders as sellers in the context of a de-SPAC transaction contravenes any common-sense understanding of the word "sellers." *See Chi. Bridge & Iron Co. N.V. v. Westinghouse Elec. Co.*, 166 A.3d 912, 913-14 (Del. 2017) ("In giving sensible life to a real-world contract, courts

must read the specific provisions of the contract in light of the entire contract. That is true in all commercial contexts, *but especially so when the contract at issue involves a definitive acquisition agreement addressing the sale of an entire business*." (emphasis added)); *Pharm. Prod. Dev., Inc. v. TVM Life Sci. Ventures VI, L.P.*, 2011 WL 549163, at *4 n.24 (Del. Ch. Feb. 16, 2011) ("Given the reality that the same word can have more than one general meaning and that the commercial context can influence which meaning the parties intended, the court must take cognizance of the existence of those general meanings" and "[b]usiness contracts must be construed with business sense as they naturally would be understood by intelligent persons of affairs ….").

The intent of Section 4.3(b)(ii) also supports ARC's interpretation. The purpose of Section 4.3(b)(ii) was to provide anti-dilution protection to the Class B stockholders if creditors were paid in Class A DWAC shares. *See* Ex. A at 24 ("[T]he point of Section 4.3 is to prevent dilution…. Consistent with this purpose, Section 4.3(b)(ii) contemplates the inclusion of '25% of ***all*** shares of Class A Common Stock that are issued or issuable.'" (alteration omitted)). As DWAC admitted, had the creditors been paid $40 million in cash, DWAC could not argue those creditors were sellers. A183. Using a share-based payoff mechanism to satisfy creditors does not transform them into sellers.

Finally, the contemporaneous transaction documents show that the TMTG Noteholders were not sellers. In the Merger Agreement, DWAC agreed to pay 87.5 million DWAC shares to TMTG's stockholders. A460, § 1.8(a). Pursuant to the Merger Agreement, TMTG stockholders could pay off TMTG's debt in shares only by diluting themselves. *Id.*; A462, § 1.9(f); A518, § 7.3(d)(ix) (requiring delivery to DWAC of evidence that "the Company shall have converted, terminated, extinguished and cancelled in full any outstanding Company Convertible Securities").

In the First Amendment, DWAC agreed to pay shares directly to TMTG's creditors to satisfy the debt. A546. The First Amendment laid bare what everyone already knew: TMTG's creditors were different from TMTG's stockholders. The newly issued shares directly from DWAC would have been issuable to TMTG's creditors and included in the Numerator.

In the Second Amendment, TMTG negotiated for additional consideration and to try to dilute DWAC Class B stockholders (without informing them). Ultimately, through the Second Amendment, DWAC negotiated to provide separate consideration to the TMTG Noteholders apparently to give DWAC the ability to argue that an accounting mechanic did not trigger the anti-dilution protection in the Charter. A589. This was simply a mechanism to be initiated at a closing table for determining how much DWAC stock would be issued to the TMTG Noteholders.

The Second Amendment is no basis to conclude that TMTG's creditors were transformed into "sellers" for purposes of vitiating the Charter's anti-dilution protection.

Indeed, the Merger Agreement, even as finally amended, acknowledges that the TMTG Noteholders are not "sellers." The "Seller Representative" under the Merger Agreement represented "Company Stockholders," A528 § 10.15—defined in the Second Amendment as "the holders of Company Stock (other than, and to the extent that, such Company Stock was received as a result of the Conversion of the Company Convertible Notes)," A592. This shows that the transaction parties did not view the TMTG Noteholders as sellers, consistent with the real-world commercial context of the transaction.

Ultimately, because the TMTG Noteholders were creditors and did not sell anything, they were not "seller[s] in the initial Business Combination." The trial court thus erred in excluding DWAC shares issued to them from the Numerator.

3. Contemporaneous transaction-related documents provide commercial context and confirm that creditors were not sellers.

In addition to the core transaction documents, other contemporaneous documents regarding the transaction also show that TMTG's creditors were not "sellers." Regardless of whether this Court finds that the Charter is unambiguous, in interpreting a contract, contemporaneous evidence regarding a contract's

application may be considered in assessing the "commercial context" between the parties. *See, e.g.*, *Greenstar*, 2019 WL 6525206, at *9 (quoting *Chi. Bridge*, 166 A.3d at 926-27).

DWAC's public filings show that the parties did not view the TMTG Noteholders as sellers. For example, the Merger Proxy—filed over nine months after the Second Amendment—when disclosing DWAC's assumptions for its anticipated beneficial ownership, recognized that TMTG notes—not TMTG *stock*—would be converted into DWAC stock: "*TMTG Convertible Notes* upon the Closing will be converted into 8,369,509 New Digital World common stock." A685 (emphasis added). That was *DWAC's* explanation of the transaction. Additionally, in TMTG's Registration Statement, the term "TMTG securityholders" was defined as "the holders of TMTG securities (other than, and to the extent that, such TMTG securities were received as a result of the conversion of the TMTG Convertible Notes)" and the term "TMTG stockholders" was defined as "the holders of TMTG common stock, each a 'TMTG stockholder' (other than, and to the extent that, such TMTG common stock was received as a result of the conversion of the TMTG Convertible Notes)." A677.

One of the TMTG Noteholders even expressly rejected being defined as a seller. Two weeks after ARC commenced this litigation, TMTG's counsel sent [redacted], a TMTG creditor, a draft

amended and restated convertible note. A664-68. The draft amended note attempted, in two places, to refer to [redacted] as a "Seller," even though the original note had referred to [redacted] as a "Lender." A666. [redacted] wrote back to TMTG's counsel correcting this and made the exact point ARC makes in this action: "I think this looks fine except there were two references to 'Seller' that I'm pretty sure should read 'Lender' as there's no seller under the note." A669. [redacted] is exactly right.

The court did not consider these documents. Ex. A at 26 n.116. TMTG's creditors were not sellers and the DWAC stock used to pay them off was required to be included in the Numerator. DWAC's starkly different litigation position should be rejected as inconsistent with the plain terms of the agreement and the commercial context of the transaction.

4. *Contra proferentem* requires any ambiguity to be interpreted against DWAC.

Because ARC's interpretation of the Charter is at least reasonable, to the extent the Court concludes that DWAC's interpretation is also reasonable, *contra proferentem* requires the Charter to be interpreted against DWAC and in favor of stockholder protection. *See* A226; *Shiftan*, 57 A.3d at 935-36; *see also Tex. Pac. Land Corp. v. Horizon Kinetics LLC*, 306 A.3d 530, 548-49 (Del. Ch. 2023), *aff'd*, 314 A.3d 685 (Del. 2024) (TABLE).

Because there are Class B stockholders other than ARC and the Charter must be interpreted consistently, *contra proferentem* would apply against DWAC.

"Doing otherwise risks the bizarre outcome of concluding that the same language of the … Agreement means different things as applied to two persons" with the same rights. *Stockman v. Heartland Indus. P'rs, L.P.*, 2009 WL 2096213, at *5 n.21 (Del. Ch. July 14, 2009).

Accordingly, if this Court concludes that ARC's and DWAC's interpretations of the Charter are reasonable, the Charter must be construed in favor of the investors, and against DWAC, resulting in the shares being included in the Numerator.

II. THE TRIAL COURT ERRED IN FINDING THAT ANY TMTG NOTEHOLDER BECAME A TMTG STOCKHOLDER.

A. Questions Presented

Even if a TMTG Noteholder could be a "seller" under Section 4.3(b)(ii)(A) of DWAC's Charter—had any noteholder actually been issued TMTG stock—did the trial court err in finding that TMTG Noteholders became TMTG stockholders immediately before the Business Combination closed? Included in this question are the issues of whether the trial court: (1) erred as a matter of law in allocating the burden of proof on this issue to ARC, thus requiring it to prove a negative, notwithstanding that any evidence would have been in DWAC's control; (2) erred by relying on Purported Annex D—notwithstanding that this document was produced by DWAC for the first time after ARC filed its pre-trial reply brief in circumstances lacking indicia of reliability and authenticity; and (3) had any evidentiary basis to find that TMTG Noteholders ever became TMTG stockholders. These issues were preserved at: A341-56; *see also* A125; A128-29; A134-36; A149-51; A159-63; A202-06; A221-27; A375; A379; A389-97; A449-52; Ex. A at 25-28, 33.

B. Scope of Review

This Court reviews "factual conclusions by the Court of Chancery to determine whether they are clearly erroneous and not supported by credible and sufficient evidence in the record," and it reviews mixed questions of law and fact *de*

novo. *Sloan v. Segal*, 2010 WL 2169496, at *5 (Del. May 10, 2010) (TABLE). "This Court also reviews the proper allocation of the burden of proof *de novo* as that inquiry is … a question of law." *Judicial Watch, Inc. v. Univ. of Del.*, 267 A.3d 996, 1003 (Del. 2021); *see also In re Zantac (Ranitidine) Litig.*, __ A.3d __, 2025 WL 1903760, at *7 (Del. July 10, 2025) ("We review questions of law, including a trial court's interpretations of rules of evidence or burdens of proof, *de novo*."). A trial court's decision whether to exclude evidence is reviewed for abuse of discretion. *In re Zantac*, 2025 WL 1903760, at *7.

C. Merits of Argument

There is no proper evidence that the TMTG Convertible Notes ever converted or that their holders were issued TMTG stock, and the trial court erred in finding otherwise. If this conversion and stock issuance had occurred, evidence should have existed, DWAC as the sole owner of TMTG would have been the party in control of such evidence, and the trial court therefore erred as a matter of law in requiring ARC to prove a negative. The trial court also erred in relying on a document produced by DWAC only after ARC filed its pre-trial reply brief in circumstances lacking indicia of reliability and authenticity. Without that document, which no witness testified about, the court had no basis to find that the TMTG Noteholders became TMTG stockholders before the Business Combination closed. Even with that document, the trial court's finding lacks support in the record.

1. The trial court erred in allocating to ARC the burden to prove a negative and in declining to exclude and instead relying on Purported Annex D.

The trial court's holding that the TMTG Noteholders were sellers rests on its finding that their notes were converted and they were actually issued TMTG stock momentarily before the Business Combination closed. Ex. A at 28. The finding depends largely—if exclusively—on Purported Annex D to the Transfer Agent Letter. Purported Annex D is the only purportedly contemporaneous document that has been identified by DWAC that even comes close to showing that the TMTG Noteholders were actually issued TMTG stock before the Business Combination closed.[3]

Given the timing and circumstances of its production, the trial court erred in declining to exclude and instead relying on Purported Annex D. Despite being clearly relevant to the parties' claims and defenses, which concerned how many DWAC shares were issued in the Business Combination, to whom, and the propriety

[3] The trial court also relied on a draft unsigned purported TMTG convertible note, the Merger Agreement as amended by the Second Amendment, and the Transfer Agent Letter, as further detailed below, *infra* § II.C.2. These documents do not show that a conversion or TMTG stock issuance occurred. The Transfer Agent Letter merely provides instructions to issue *DWAC* stock; the letter does not show that the TMTG Noteholders were ever issued TMTG stock. The draft unsigned note shows nothing. The Merger Agreement merely contemplated that conversion and a TMTG stock issuance *would* occur immediately before the closing of the Business Combination, not that the conversion or issuance *actually occurred*. As this case shows, contracts are not always performed in accordance with their terms.

of those issuances, DWAC failed to produce Purported Annex D until after DWAC relied on the document in its answering pre-trial brief knowing it had not produced it, and *after ARC filed its pre-trial briefs*—both of which emphasized the lack of record evidence showing that the TMTG Noteholders ever became TMTG stockholders. Such "[d]iscovery abuse has no place in [Delaware] courts," *Terramar Retail Ctrs., LLC v. Marion #2-Seaport Tr. U/A/D June 21, 2002*, 2018 WL 6331622, at *8-9 (Del. Ch. Dec. 4, 2018) (granting motion *in limine* to exclude belatedly produced evidence), and "[l]ate production provides grounds for excluding the evidence," *IQ Hldgs., Inc. v. Am. Com. Lines Inc.*, 2012 WL 3877790, at *2 (Del. Ch. Aug. 30, 2012). This type of misconduct not only involves "actual prejudice in the specific case," but also "the degradation of the litigation process." *In re ExamWorks Grp., Inc. S'holder Appraisal Litig.*, 2018 WL 1008439, at *9 (Del. Ch. Feb. 21, 2018) ("For the litigation system to function, parties must follow the rules. If participants suspect that others are not following the rules, then the process deteriorates. People who follow the rules feel like chumps when others seem to be cutting corners or breaking rules and getting ahead. People who otherwise might not think of pushing limits become more aggressive if they think everyone else is doing it. It is this broader, systemic interest that the Delaware Supreme Court seems to have had in mind when stressing that courts must address discovery abuse not

only to protect litigants, but also to protect the public and the bar."). Purported Annex D should have been excluded.

The trial court, however, excused this misconduct, erroneously concluding that ARC "carrie[d] the burden of proof" and "first raised its theory that the TMTG Convertible Noteholders were not 'sellers' after discovery closed." Ex. A at 28 n.122. Both conclusions are wrong.

First, the plaintiff's burden of proof does not apply to proving a negative (or nonexistence of a fact), particularly where, as here, any documents supporting DWAC's conversion argument would be entirely within DWAC's control. The Court of Chancery in many cases, including several affirmed by this Court, has found that a party need not prove a negative, especially when any affirmative evidence would be in the opposing party's control. *See, e.g.*, *Williams Cos. S'holder Litig.*, 2021 WL 754593, at *20 n.233 (Del. Ch. Feb. 26, 2021) ("[I]t is not incumbent on a class representative [plaintiff] to prove a negative."), *aff'd sub nom. Williams Cos. v. Wolosky*, 264 A.3d 641 (Del. 2021) (TABLE); *AB Stable*, 2020 WL 7024929, at *49 & n.191 (collecting authorities and find that "[p]lacing the burden on the [defendant] buyer also requires the buyer to prove an affirmative fact, rather than forcing the seller to prove a negative"); *Rabkin v. Olin Corp.*, 1990 WL 47648, at *8 (Del. Ch. Apr. 17, 1990), *aff'd*, 586 A.2d 1202 (Del. 1990) (TABLE); *Gurney-Goldman v. Goldman*, 321 A.3d 559, 572 (Del. Ch. 2024). Indeed, the authorities

the trial court cited do not require otherwise. Ex. A at 28 n.122 (citing *Oberly v. Howard Hughes Med. Inst.*, 472 A.2d 366, 387 (Del. Ch. 1984); 29 Am. Jur. 2d *Evidence* § 173). *Oberly* involved an attorney general challenge to the validity of a non-stock corporation's amended and restated certificate of incorporation on the basis that it was not adopted in compliance with the corporation's bylaws; in that context, the Court of Chancery appropriately concluded that the attorney general should bear the burden of proof. 472 A.2d at 386-87.

Remarkably, the section from American Jurisprudence quoted by the trial court actually supports ARC. DWAC apparently successfully misled the trial court into omitting the final clause from the relevant sentence: "whoever asserts a claim or defense that is negative in form or depends upon a negative proposition has the burden of establishing the truth of the assertion, *unless the facts are peculiarly within the knowledge of the opposing party*." 29 Am. Jur. 2d *Evidence* § 173 (emphasis added) (footnote omitted); *see also* A368 (quoting same source and omitting emphasized clause); A391 (ARC pointing out that DWAC's citation to this treatise was misleading). The trial court also omitted that this same section from American Jurisprudence states that "[c]ourts generally do not require litigants to prove a negative, because it cannot be done." 29 Am. Jur. 2d *Evidence* § 173.

Moreover, because DWAC was seeking to take advantage of an exception in the Charter—the clause that excluded shares issued to "seller[s]" from the

Conversion Ratio—it should have been charged with the burden to prove that the exception applied regardless of whether ARC otherwise would have had to prove a negative. *AB Stable*, 2020 WL 7024929, at *51 ("As a matter of hornbook law, a party seeking to take advantage of an exception to a contract is charged with the burden of proving facts necessary to come within the exception." (internal quotation marks omitted)).

Second, the trial court's statement that "ARC first raised its theory that the TMTG Convertible Noteholders were not 'sellers' after discovery closed," Ex. A at 28 n.122, is not only irrelevant—given the clear relevance of Purported Annex D and any related documents—but also wrong. Notwithstanding that the Business Combination had not yet closed when ARC filed its original complaint, that complaint alleged that "the calculations for the numerator should include … up to 8,369,509 shares of [DWAC] common stock issuable upon conversion of outstanding TMTG Convertible Notes immediately prior to the Effective Time in connection with the Closing," thus putting DWAC on notice that shares issued to the TMTG Noteholders were at issue in this action. A45, ¶ 29. Moreover, during discovery, ARC moved to compel documents from TMTG regarding the TMTG Convertible Notes, contending that "[o]ne of the biggest numerical disputes in this action is whether the Class A shares issued as a result of the TMTG Convertible Notes are shares issued to the 'seller' under the Charter." A63, ¶ 19; *see also* A72-

73, ¶ 10 ("The documents relating to who the TMTG Noteholders were, what rights they had, why they had those rights, the mechanics of receiving the Class A shares, and whether the parties had agreements regarding how the Conversion Ratio would apply are relevant to whether a TMTG Noteholder was a 'seller' in this transaction."). The trial court granted this motion, finding that documents relating to whether the TMTG Noteholders "are included in the conversion ratio" were relevant. A102; *see also* A107-09.

The trial court's final purported basis for declining to exclude Purported Annex D—that ARC purportedly "was on notice of the existence of Annex D for months, after receiving the letter referencing it in a production from the transfer agent"—was also without basis. Ex. A at 28 n.122. Aside from directing DWAC's transfer agent to "reserve up to 508,741 shares of New Digital World common stock to be issued upon closing in accordance with a TMTG convertible note with a variable conversion feature," the Transfer Agent Letter makes no mention of the TMTG Noteholders. A706. Indeed, that sentence does not even reference Annex D. The prior sentence in that paragraph, which does reference Annex D, merely states that a number of shares of DWAC stock should be issued "to the persons and in the amounts listed" in Annex D. *Id.* Nothing on the face of the letter suggests that Annex D would include the TMTG Noteholders.

But even assuming this letter should have put ARC on notice that Annex D might be important and that it was ARC's burden to follow up on DWAC's failure to comply with its discovery obligations, this does not excuse DWAC's burden of showing that Purported Annex D was admissible. *See* D.R.E. 106; D.R.E. 401; D.R.E. 403; D.R.E. 801; D.R.E. 802; D.R.E. 1002; *see also* A341-56. Not one witness explained the document's provenance, why it was created, or, for that matter, testified in any way about the document—precisely because it was first produced after all trial briefing. Furthermore, the trial court's ruling finds fault with ARC for not figuring out a document might be missing from a non-party production, but excuses DWAC's abject failure to produce the letter (ever) and the purported annex (until the eve of trial). And the trial court excused this behavior, all while DWAC sat back *and relied on the letter and Purported Annex D in its pre-trial answering brief while ARC did not have the document*. Permitting such conduct turns discovery upside down. *Digiacobbe v. Sestak*, 1998 WL 684149, at *6 (Del. Ch. July 7, 1998) ("The days in which surprise was an acceptable way of proceeding in litigation are long over."); *IQ Hldgs.*, 2012 WL 3877790, at *2. It is not reasonable to expect a plaintiff to identify every discrepancy in party or third-party productions in an expedited case rather than placing the burden on defendants to comply with their discovery obligations especially with respect to a document they viewed as so critical that it became their sole evidence at trial. *See Hoey v. Hawkins*, 332 A.2d

403, 405-07 (Del. 1975); *James v. Nat'l Fin. LLC*, 2014 WL 6845560, at *8-12 (Del. Ch. Dec. 5, 2014).

Aside from these erroneous findings, the trial court did not otherwise address the substance of ARC's motion *in limine* to exclude Purported Annex D. That motion provided numerous other bases on which the evidence should have been excluded, including that "there is no evidence the spreadsheet correlates to the letter [the transfer agent] produced." A344, ¶ 6; *see also* A350, ¶¶ 26-27; A354-55, ¶ 35. Indeed, DWAC's transfer agent—the only person to produce the Transfer Agent Letter itself—did not produce any version of Annex D. *Id.* ¶¶ 6, 24. Purported Annex D was produced only by DWAC, which did not produce any versions (drafts or otherwise) of the Transfer Agent Letter or Annex D or any communications about either one, despite the letter being signed by DWAC's then-CEO. *Id.* ¶¶ 6, 8, 24, 35. In fact, the Transfer Agent Letter and the Annex were never produced as an intact document "family." Given the circumstances surrounding the revelation of Purported Annex D—and the absence of any opportunity to examine any witnesses about it—the trial court abused its discretion in not excluding this document here.

As further detailed below, given the lack of other evidence supporting a finding that the TMTG Noteholders' notes actually converted and that they were actually issued TMTG stock before the Business Combination closed, this evidentiary ruling is not harmless error, and reversal is required.

2. The trial court's finding that the TMTG Noteholders were issued TMTG stock immediately before closing is not supported by the record.

The trial court relied on four documents in finding that the TMTG Noteholders' notes were converted and they were actually issued TMTG stock momentarily before the Business Combination closed, *see* Ex. A at 27-28 & nn.118-19, 122: (1) a draft unsigned purported TMTG convertible note, A697-704; (2) the Merger Agreement (as amended by the Second Amendment), A454-545; A588-98; (3) the Transfer Agent Letter, A705-17; and (4) the Purported Annex D to the Transfer Agent Letter, A687-96.[4] None of these documents, individually or collectively, shows that the TMTG Convertible Notes were converted to TMTG stock or that TMTG stock was ever issued to their holders.

First, neither the draft unsigned promissory note cited by the court nor the Merger Agreement shows that the notes converted to TMTG stock or that any such TMTG stock was issued to their holders. In addition to the lack of any evidence that the draft note relied on by the trial court was ever executed or became effective, *see* Ex. A at 27 n.118 (citing JX318)—especially in superseding the notes of all TMTG

[4] Although the court did not directly cite Purported Annex D by its JX number, the court used it to conclude that the Transfer Agent Letter directed the transfer agent to issue DWAC stock to "all private TMTG stockholders—including the former TMTG Convertible Noteholders." Ex. A at 27-28 & n.122. It is impossible to conclude from the Transfer Agent Letter only that the letter directed the transfer agent to issue DWAC stock to "all private TMTG stockholders" let alone "the former TMTG Convertible Noteholders." *See* A706.

Noteholders—proof of existence of a contract is not proof of compliance. Agreements often are not followed. Indeed, in this case, the trial court found DWAC breached its Charter—which called for Class B shares to "automatically convert" into Class A shares pursuant to the Conversion Ratio. A572, § 4.3(b)(ii). The fact that the draft note and the Merger Agreement purportedly contemplated conversion immediately before the closing of the Business Combination is, in itself, not evidence that any conversion occurred or TMTG shares were issued.

Moreover, the court's reliance on *Salladay v. Lev*, 2020 WL 954032 (Del. Ch. Feb. 27, 2020), in concluding that the TMTG Convertible Notes' conversion mechanism alone meant that their holders became TMTG stockholders before closing is misplaced. Ex. A at 27 & n.121. The language from *Salladay* that the trial court here quoted—that the ownership stake at the effective time of the transaction included "notes that would automatically convert into shares of the company's common stock immediately prior to the consummation of the transaction," *id.* (alterations omitted) (quoting *Salladay*, 2020 WL 954032, at *15 n.172)—is from a footnote in the *Salladay* opinion that itself was quoting allegations from the complaint in that case, *Salladay*, 2020 WL 954032, at *15 n.172 ("The Amended Complaint states that the 'Notes would automatically convert into shares of Intersections common stock immediately prior to the consummation of the

Transaction.'"). It was not a holding.[5] Allegations made in another case are irrelevant to whether the TMTG Noteholders in this case were actually issued TMTG stock.

Second, the Transfer Agent Letter likewise offers no evidentiary support for a conclusion that the TMTG Noteholders' notes were converted into TMTG stock or that any such stock was issued to them. The entirety of the pertinent text is as follows:

Entry #6: Holders of TMTG common stock

Issue an aggregate of 94,739,894[1] shares of New Digital World common stock to the persons and in the amounts listed on the New Digital World Master Distload File attached as Annex D hereto, in book entry form, bearing the legends set forth in Annex D. Please reserve up to 508,741 shares of New Digital World common stock to be issued upon closing in accordance with a TMTG convertible note with a variable conversion feature.

The referenced Annex D was not produced with the letter, and this paragraph does not identify any of the TMTG Noteholders, let alone show that they were issued TMTG stock. Indeed, this letter makes no reference to the issuance of *TMTG* stock.

Finally, Purported Annex D (even if not excluded—and it should be, *supra* § II.C.1) does not show that TMTG Noteholders were ever issued TMTG stock. Purported Annex D lists several individuals and entities, all but three of which are

[5] Indeed, from the face of the *Salladay* opinion, it appears that the complaint's allegation there was inaccurate. The court described the conversion mechanism as a right exercisable at the noteholder's option: "[the noteholder] gained the right to automatically convert its Notes." 2020 WL 954032, at *15.

followed by a bracketed entry for an issue date of "[3/25/2024]." A688.[6] Not only do the brackets suggest a placeholder, but ARC was also deprived of the ability to cross-examine any witnesses about this document because of DWAC's discovery misconduct. At best, Purported Annex D shows that someone thought TMTG stock might be issued on March 25, 2024. But it provides no proof that any issuance actually occurred.

The lack of evidence of such a fundamental aspect of the transaction is stark. A stock issuance is a formal corporate matter that requires compliance with 8 *Del. C.* §§ 151-153, among other applicable statutory sections. It cannot be accomplished merely automatically. *United Atlantic Ventures, LLC v. TMTG Sub Inc.* is instructive. 2025 WL 2505325 (Del. Ch. Sept. 2, 2025). There, plaintiff UAV—one of the three TMTG stockholders pre-Business Combination—challenged (among other things) the validity of a transfer restriction placed on the DWAC stock it received in the Business Combination. *Id.* at *15-17. It contended that the transfer restriction violated 8 *Del. C.* § 151(a) because the restriction "was not 'clearly and expressly set forth' in [DWAC's post-Business Combination certificate of incorporation] when UAV's [DWAC] shares were issued." *Id.* at *16. Specifically,

[6] The three listed without a bracketed issue date for their shares were TMTG's pre-Business Combination stockholders: Donald Trump, United Atlantic Ventures ("UAV"), and Bradford Cohen. *Id.*

UAV contended that the DWAC shares it received "were issued 'at 8:19 a.m. on March 25, 2024, the Effective Time [of the Business Combination] when UAV's pro rata share of the merger consideration was deposited with the transfer agent,' which occurred before [DWAC's post-Business Combination certificate of incorporation] 'was filed at 8:22 am on March 25, 2024.'" *Id.* (alterations omitted). The court rejected this argument as "divorced from Delaware law":

> [N]o [DWAC] shares were issued to UAV at the merger's Effective Time.
>
> "Issue" means to "emit," "send out," or put stock in "circulation." To be deemed issued, stock must "not only pass from the custody and control of the corporation but also be delivered into the possession of the stockholder." At the Effective Time, UAV only became "entitled to receive … a number of" [DWAC] shares as "merger consideration."
>
> The transfer agent did not—and could not—issue shares to UAV in the three-minute window between the filing of the Certificate of Merger (i.e., the Effective Time) and of [DWAC's post-Business Combination certificate of incorporation]. The post-merger shares were issued after [DWAC's post-Business Combination certificate of incorporation], which "stated and expressed" the Lock-Up, was filed.…
>
> Because the Lock-Up was in [DWAC's post-Business Combination certificate of incorporation] when UAV received its restricted stock, Count II is dismissed.

Id. at *16-17 (alterations and footnotes omitted). This analysis is consistent with case law from this Court finding that prospective stockholders are not owed fiduciary duties until the stock issuance actually occurs and record ownership is passed to the applicable stockholder or its agent. *Anadarko Petroleum Corp. v. Panhandle E.*

Corp., 545 A.2d 1171, 1175 (Del. 1988) ("[T]he the preparation of the stock list and the subsequent delivery to the transfer agent was done merely to facilitate the stock distribution plan for October 1, 1986 and did not serve to pass record ownership to Panhandle's stockholders. Thus, the existence of a stock ledger containing the names of Panhandle's stockholders as of September 12, who had an expectation of becoming Anadarko shareholders at a future specified date, does not provide a valid basis to impose fiduciary duties on Panhandle and Anadarko's former directors.").

The analysis from *United Atlantic Ventures* demonstrates that the purported evidence on which DWAC (and the trial court) relied—even Purported Annex D—fails to show that an issuance of TMTG stock to TMTG Noteholders occurred before the Business Combination closed.

* * * * *

Ultimately, there is no competent evidence that the TMTG Noteholders were ever issued TMTG stock. They therefore could not have been considered "seller[s] in the … Business Combination," as contemplated by the Charter. A572, § 4.3(b)(ii). The trial court erred in finding otherwise.

CONCLUSION

For the foregoing reasons, the trial court's decision should be reversed and remanded with instructions to (1) recalculate the Conversion Ratio to include the DWAC shares issued to TMTG Noteholders in the calculation of the Numerator, as contemplated by Section 4.3(b)(ii) of DWAC's Charter; and (2) consider an appropriate remedy, as specific performance will no longer make the Class B Stockholders whole, in light of the decline of DWAC's stock price during the pendency of this litigation.

/s/ Matthew D. Perri
Matthew D. Perri (#6066)
Daniel E. Kaprow (#6295)
Andrew L. Milam (#6564)
Christine J. Chen (#7499)
Elizabeth J. Freud (#6803)
RICHARDS, LAYTON & FINGER, P.A.
920 North King Street
Wilmington, DE 19801
(302) 651-7700
perri@rlf.com
kaprow@rlf.com
milam@rlf.com
chen@rlf.com
freud@rlf.com

Attorneys for Plaintiff Below, Appellant/Cross Appellee ARC Global Investments II LLC

Dated: October 1, 2025