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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 **PUBLIC VERSION** **FILED: DECEMBER 19, 2025**

APPELLANT'S REPLY BRIEF ON APPEAL AND CROSS-APPELLEE'S ANSWERING BRIEF ON CROSS-APPEAL

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INTRODUCTION[1]

DWAC breached its Charter. It initially claimed the Charter's anti-dilution protections did not apply. When threatened with litigation, DWAC pivoted, but used an artificially low Conversion Ratio to punish its Class B stockholders. Using DWAC's (non-appellate, non-Delaware) litigation counsel's unprofessional communications to buy time for a surreptitiously filed complaint, DWAC ran to Florida.

When DWAC's forum-shopping failed, ARC proceeded to trial. DWAC's Chairman and CEO explained he wanted to provide ARC no shares. AR28, at 48:14-17. In discovery, DWAC refused to collect documents from any target-side custodian and, as ARC later learned, apparently intentionally withheld documents it would later claim were dispositive, at least until after DWAC relied on that document in its trial brief.

When ARC succeeded in proving DWAC breached the Charter, DWAC paid out shares at a higher Conversion Ratio to Class B stockholders. When ARC appealed, because the court's interpretation of the anti-dilution language is only partially correct and DWAC had improperly ambushed ARC at trial while failing to meet its factual burden, DWAC attempted to avoid paying ARC again via a meritless

[1] Capitalized terms not defined herein take the meanings given in ARC's opening brief ("OB at __"). Appellee's Answering Brief on Appeal and Cross-Appellant's Opening Brief on Cross-Appeal is cited as "AB at __."

cross-appeal. The cross-appeal is based on entirely new arguments, never presented below, that are plainly incorrect.

DWAC never cared what the Charter or the facts required. It hid its *filed* Florida forum-shopping complaint while pretending to discuss settlement in good faith. It hid, *and still has never produced in a complete document family*, its purported evidence of having issued certain shares while pretending to prepare for trial in good faith. It now seeks to shield itself from an adverse ruling based on fictions about ARC's managing member that are not in the record or the trial court's decision, are irrelevant, and are incorrect.

For ARC, this is a case about obtaining shares owed to Class B stockholders under a Charter resulting from a highly successful business combination it played a critical role in. For DWAC, this is a case about punishing ARC for enforcing its rights. DWAC's practice of ignoring contracts and its discovery obligations must not be rewarded. The trial court's interpretation of "issued or issuable" should be affirmed. The trial court's interpretation of the term "seller," incorrect allocation of the burden of proof, and reliance upon belatedly produced, so-called evidence should be reversed.

SUMMARY OF ARGUMENT ON CROSS-APPEAL

I. Denied. The Court of Chancery properly concluded that the Conversion Ratio numerator included all issued and issuable Class A stock, subject to certain inapplicable exceptions—regardless of whether such stock was issued or issuable on account of Equity-linked Securities. DWAC misunderstands the basis of the trial court's decision and the Conversion Ratio's proper construction by myopically focusing on the defined term "Equity-linked Securities" and ignoring the other words on the page. DWAC also misunderstands the Charter's grammar by contending the word "otherwise" modifies the word "conversion or exercise," seemingly taking the nonsensical position that the Conversion Ratio applies to shares issuable upon the "otherwise conversion" or "otherwise exercise." DWAC does the same thing with the cases it cites.

II. Denied. The trial court acted within its discretion in awarding ARC a $75,000 mootness fee for causing DWAC to issue supplemental disclosures. DWAC does not challenge the court's finding that ARC's disclosure claim was meritorious when filed nor dispute that the supplemental disclosures were made to moot ARC's claim. The court appropriately exercised its discretion, based on analogous precedent, in awarding a modest fee for disclosures that provided additional context to stockholders concerning the consideration they stood to receive. The award should be affirmed.

ARGUMENT

I. THE TRIAL COURT INCORRECTLY INTERPRETED "SELLER" TO INCLUDE TMTG NOTEHOLDERS.

A. Convertible noteholders do not fit within the plain meaning of the term "seller."

The parties (and the trial court) seemingly agree the term "seller" has a plain meaning: "a person who sells anything; the transferor of property in a contract of sale." *Seller*, BLACK'S LAW DICTIONARY (10th ed. 2014); AB at 20 ("A 'seller' is 'one who sells anything' or, more precisely, 'the party who transfers property in the contract of sale.'" (quoting OB Ex. A at 26)).

In the Business Combination, the property being sold was the ownership of TMTG. TMTG Noteholders—the target company's creditors—were never owners of TMTG. The TMTG Noteholders did not sell anything or transfer any property. They loaned money to TMTG and received DWAC stock from DWAC in satisfaction of that debt. OB at 20-22. Using a share-based payoff mechanism does not transform creditors into sellers.

DWAC's contentions largely ignore this or mischaracterize ARC's arguments that some rights in the property sold is necessary to make someone a seller. For example, DWAC claims that "ARC urges that the term 'sellers' in DWAC's Charter be limited to TMTG equity holders who voted on the Business Combination" and that "'sellers' be confined to those with appraisal or books-and-records rights." AB

at 23. Not so. ARC's argument is that even under DWAC's definition of "seller" and assuming DWAC met its burden of showing that the notes converted (it did not (and they did not), *see infra* § II; OB at 28-43), there was never a time in which any TMTG Noteholders had any rights relating to the property DWAC claims they sold. ARC merely listed for illustration examples of rights that stockholders would have had but the noteholders did not have. In other words, rights that any seller in the Business Combination would have had, but that the TMTG Noteholders did not have.

DWAC's contention that "ARC's interpretation also defies common sense" because it would "exclude shares issues to [non-voting] preferred stockholders," AB at 24, again misconstrues ARC's argument. It is undisputed that TMTG did not have any preferred stockholders. The point is: the lack of voting rights is just one of many stockholder rights that the TMTG Noteholders never had.

Finally, DWAC's suggestion that DWAC's Class B stockholders' anti-dilution rights in the Charter were intended to protect target company stockholders is nonsensical. It makes no sense for a company to adopt a provision in *its* charter to protect an unidentified future acquisition target's stockholders rather than its own stockholders. That is especially absurd when one considers that the Company's sole stockholder when the Charter was adopted was a Class B stockholder entitled to the protection. Second, DWAC's new theory is contradicted by DWAC's real-time

disclosures about the Conversion Ratio's purpose. B135 (explaining in Merger Proxy that "the anti-dilution provision contained in our Charter[will] adjust[] the conversion ratio of our Class B common stock to Class A common stock *for the benefit of holders of our Class B common stock*" (emphasis added)); AR156 (explaining in connection with the IPO that the Conversion Ratio provision "may make it more difficult and expensive for us to consummate an initial business combination"); AR160 (same); AR164 (same). Indeed, the argument is so meritless DWAC made the opposite argument below: "The Conversion Ratio is an unambiguous mathematical formula that uses unambiguous inputs *to limit the dilution of DWAC Class B shares*." A245 (emphasis added); *see also generally* A244-315 (repeatedly describing the Conversion Ratio as providing anti-dilution to ARC and other Class B stockholders). Given DWAC's disclosures and prior argument, the Court of Chancery correctly recognized that the Conversion Ratio's purpose was to prevent dilution of DWAC's Class B stockholders. OB Ex. A at 24.

B. ARC does not rely on extrinsic evidence for the meaning of "sellers."

DWAC's contention (AB at 26-28) that ARC is inappropriately relying on purported "extrinsic evidence" contradicts DWAC's own arguments. DWAC routinely relies on the same "extrinsic" documents, namely DWAC's public SEC filings, the Merger Agreement, and its amendments (AB at 20-22, 31-34). DWAC is wrong anyway. ARC relies on documents to supply context to apply the term

"seller" to a transaction occurring years after the Charter was drafted. Use of extrinsic material is permissible for that purpose even if the Charter is unambiguous. *See, e.g.*, *Greenstar IH Rep, LLC v. Tutor Perini Corp.*, 2019 WL 6525206, at *9 (Del. Ch. Dec. 4, 2019) ("The question, then, is whether the Holdback Agreement has only one reasonable interpretation when read in full and situated in 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 description of the transaction without running afoul of the parol evidence rule." (alteration, footnote, and internal quotation marks omitted)), *aff'd*, 240 A.3d 1 (Del. 2020) (TABLE).[2]

DWAC's attempts to distinguish the documents ARC cited for context are equally unpersuasive. Yet again, DWAC makes the centerpiece of its arguments documents it failed to provide during discovery by relying primarily on the terms of the purportedly unambiguous notes. DWAC did not produce those notes and they are not in the trial record. *See* AB at 21 (citing A698-99—a *draft, unsigned* note); OB Ex. A at 27 & n.118 (citing same draft, unsigned note). The Court must reject such gamesmanship.

[2] Contrary to DWAC's suggestion *Greenstar* does not "say[] the opposite" of this quoted language. AB at 26. *Greenstar* acknowledges that the commercial context may be considered in determining whether a contract is unambiguous and then in interpreting it if it is.

Second, DWAC badly misreads its own Merger Agreement. As detailed in ARC's brief, the original Merger Agreement and the First Amendment made clear that TMTG's creditors were different from TMTG's stockholders. Originally, TMTG stockholders could pay off TMTG's debt in shares by diluting themselves, and under the First Amendment, DWAC agreed to pay shares directly to TMTG's creditors to satisfy the debt. OB at 8, 23. As for the Second Amendment, DWAC does not even respond to ARC's assertion, and thus concedes, that DWAC negotiated this amendment to provide separate consideration to the TMTG Noteholders to give DWAC the ability to argue later that an accounting mechanic did not trigger the anti-dilution protection. *Id.* at 23-24.

Moreover, DWAC's attempt to explain away the Merger Agreement's definition of "Seller Representative"—who DWAC concedes did not represent the TMTG Noteholders, AB at 27—fails. DWAC says this "representation predated the conversion of the notes," suggesting that the Seller Representative's duties related solely to pre-closing matters. *Id.* But that is inconsistent with the Merger Agreement and false. The Seller Representative's key tasks relate to the closing *and post-closing efforts*. For example, the Seller Representative was to review and potentially raise objections to the Closing Statement (as defined in the Merger Agreement) that was to be delivered up to 90 days after the closing. A464, § 1.13. Because the figures in that statement (and any changes resulting thereto through the objection

process) could affect the total merger consideration received on TMTG's side of the transaction, it makes no sense to exclude TMTG Noteholders from representation by the Seller Representative if they were sellers.

Third, DWAC's response, AB at 28, concerning DWAC's other public filings describing the transaction (the Merger Proxy and TMTG's post-closing Registration Statement) likewise fails. DWAC contends that these documents do not "use the term 'seller,' much less define it to exclude former Noteholders." *Id.* That is not the point. The Merger Proxy, filed well after the Second Amendment, expressly stated that "TMTG Convertible Notes upon the Closing will be converted *into 8,369,509 New Digital World common stock*," A685 (emphasis added)—thus recognizing the notes were satisfied with *DWAC*, not TMTG, stock and showing the noteholders were not sellers. DWAC's inability to understand the distinction between *pre-closing TMTG* stock and *DWAC* stock was likewise on full display at trial. A433-34, at 244:15-245:18 (citing JX360 and JX361, available at AR376-973). If anything, the post-closing Registration Statement reinforced the transaction parties' differing treatment of TMTG Noteholders and stockholders. A677 (excluding from the definitions of "TMTG securityholders" and "TMTG stockholders" those holding, respectively, TMTG securities or TMTG stock "to the extent that[] such [TMTG stock or securities, as applicable,] were received as a result of the conversion of the TMTG Convertible Notes").

These documents, which the Court may properly consider to give context to the transaction, support ARC's position that the TMTG Noteholders were not "sellers" under the Charter.

C. DWAC's *contra proferentem* argument ignores that the Charter protects all Class B stockholders.

If the Court determines the Charter is ambiguous, it must be read in ARC's favor. DWAC's response ignores that ARC was not DWAC's only Class B stockholder at the time of the Business Combination. That alone is fatal to DWAC. OB at 26-27.

Instead, DWAC contends, for the first time on appeal, that the presumption against preferred stockholder rights applies here for purposes of interpreting the Charter. AB at 28-29. Even if this waived argument is considered, it fails for at least two reasons. First, it misreads applicable authority. While *Shiftan v. Morgan Joseph Holdings, Inc.* "recognized the *potential* tension in applying the doctrine of *contra proferentem* to interpret a certificate addressing preferred stock" because "preferences claimed by preferred stockholders must be clearly set forth … and will not be presumed or implied," it did not hold, as DWAC suggests, that *contra proferentem* cannot apply to preferred stock. 57 A.3d 928, 936 (Del. Ch. 2012) (emphasis added). Rather, *Shiftan* quoted applicable authority from this Court acknowledging that *contra proferentem* can apply to preferred stock. *Id.* at 936-37.

Second, and more fundamentally, DWAC's Class B stock was not preferred stock. "Preferred stock, as the term implies, is entitled to certain *preferences over other stock*," such as "priorit[ies] as to dividends or as to the distribution of assets." *Shintom Co. v. Audiovox Corp.*, 888 A.2d 225, 228 (Del. 2005) (emphasis added). DWAC does not identify any preference Class B stock had over Class A stock. The Conversion Ratio operates to *convert* Class B stock into Class A stock. Such conversion is not a preference, and DWAC identifies no authority holding otherwise. There is no presumption against common stockholders' rights, and no tension to resolve between that inapplicable presumption and the *contra proferentem* doctrine.

Accordingly, if this Court concludes that both 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 issued to the TMTG Noteholders being included in the Numerator.

II. THERE IS NO EVIDENCE CONVERTIBLE NOTEHOLDERS BECAME TMTG STOCKHOLDERS, AND DWAC'S PURPORTED EVIDENCE WAS IMPROPERLY SUBMITTED.

A. There is no competent evidence the TMTG Convertible Notes converted.

DWAC essentially concedes it produced no competent evidence of any conversion of the TMTG Convertible Notes. Aside from Purported Annex D—which the trial court erred in considering, *see* OB at 30-37; *infra* § II.B—DWAC relies entirely on a draft unsigned note and its own public filings as purported evidence of conversion, *see* AB at 21-22, 31-32. But this is an appeal from a post-trial ruling. DWAC failed to produce any documents showing that DWAC's public filings state the truth, and the draft unsigned note is not proof of anything relevant. Most of DWAC's purported evidence merely says something will occur in the future, which is not competent evidence it actually occurred. OB at 30 n.3, 38-43. DWAC does not address that point.

Instead, DWAC attempts to fault ARC for not discussing TMTG's Registration Statement in its opening brief. But the trial court did not rely on that document in finding that the TMTG Convertible Notes had actually converted. *See* OB Ex. A at 27-28 (identifying the TMTG Convertible Notes, the Merger Agreement, the Transfer Agent Letter, and Purported Annex D).[3] Nor could it have.

[3] While the trial court purported to cite and quote JX137 (TMTG's Registration Statement) in a footnote, the language quoted—"[p]rior to the Effective

See D.R.E. 801. That post-closing, hearsay document is not a contemporaneous TMTG record that the notes actually converted or that TMTG stock was actually issued to the noteholders. A451, at 315:8-15; A452, at 319:5-17. If a statement in an SEC filing were sufficient to establish the truth of the matter asserted therein, stockholder claims challenging disclosures could not exist. A451, at 315:8-15.

That leaves only Purported Annex D. Even if not excluded—and it should have been—and regardless of which party had the burden of proof, that purported document does not show that TMTG Noteholders were ever issued TMTG stock. Indeed, DWAC's description of the document is unsupported by the document itself and shows how desperate DWAC is to create evidence. DWAC contends that "Annex D is an Excel spreadsheet attached to a Transfer Agent Instruction Letter." AB at 32. Not so. As detailed in ARC's opening brief: (1) there is no evidence the spreadsheet correlates to the Transfer Agent Letter; (2) no version of Purported Annex D was produced by the transfer agent—the only person who produced the Transfer Agent Letter; (3) Purported Annex D was produced only by DWAC—which did not produce any versions of the Transfer Agent Letter, Annex D, or any

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Time, the issued and outstanding TMTG Convertible Notes will be converted into shares of TMTG common stock," *id.* at 27 n.119—appears nowhere in the Registration Statement, *see generally* AR166-375. This likely resulted from DWAC's same erroneous quotation in its pre-trial answering brief misleading the trial court. A300 n.164. The court did not identify the Registration Statement by name or cite any actual portion of it in its analysis.

communications about them; and (4) the Transfer Agent Letter and Annex D were never produced as a document family by anyone. OB at 37. *DWAC does not respond to any of these points*. This single purported version of Annex D produced in a way untethered to the letter to which it supposedly was attached, paired with the undisputed fact that DWAC did not produce any communications about the letter or Annex D, shows both that DWAC failed to participate properly in discovery and the notes did not convert. Reversal is required.

DWAC also wrongly contends that Purported Annex D "lists former TMTG Convertible Noteholders alongside other TMTG Stockholders"; the "'TMTG Shares' columns [sic] shows the 'Number of Shares, whether held in Certificate, Book, or DRS' that each former TMTG Convertible Noteholder received upon conversion"; and the "'issue date' column marks the date of conversion as March 25, 2024." AB at 33. But each statement adds information to the spreadsheet that is not there. Purported Annex D does not identify anyone as a TMTG Convertible Noteholder or reference any converted notes. A688. And the issue date column includes a bracketed entry of "[3/25/2024]" for all but three entries. *Id.* This document, even if considered, does not show "that holders of TMTG Notes became TMTG stockholders before the Business Combination closed" as DWAC pretends. AB at 33. If the document had been produced during discovery, instead of after ARC submitted its trial reply brief for a paper-record trial, perhaps deposition

testimony could have clarified these points. *See* A392-96, at 80-93; AR91. But there is nothing in the record given that it was used to ambush ARC, rather than as part of a legitimate search for truth. The document simply cannot be considered, *infra* II.B, and even if considered, construed in DWAC's favor as the trial court did.

Finally, DWAC's cursory attempt to distinguish *United Atlantic Ventures, LLC v. TMTG Sub Inc.*, 2025 WL 2505325 (Del. Ch. Sept. 2, 2025)—contending it is inapposite because it involved a post-closing issuance, AB at 34—fails. The import of *United Atlantic Ventures* is not the post-closing nature of the stock issuance there, it is the holding that a stock issuance is a formal corporate act that cannot be accomplished merely automatically: "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." 2025 WL 2505325, at *16 (alterations and internal quotation marks omitted). As a result, the court found that the transfer agent did not and could not have issued "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]." *Id.* at *17. Here, DWAC does not identify any time period in which the TMTG stock was supposedly issued (or any evidence such a conversion or issuance occurred in such time period), and instead contends it happened instantaneously and immediately prior to closing. But DWAC does not attempt to explain how this could have

happened here, when a three-minute window was not enough time for this same exercise to be accomplished in *United Atlantic Ventures*. The post-closing aspect of the issuance in *United Atlantic Ventures* is thus an irrelevant distinction. The case supports ARC's point that issuing stock is a formal act that must actually be undertaken by the corporation. If it occurred, there would be competent evidence. None was produced.

Ultimately, there is no competent, admissible evidence of any conversion or issuance of TMTG stock to its noteholders.

B. The trial court erred in considering Purported Annex D, and its ruling against ARC depended on that document.

As detailed in ARC's brief (OB at 30 & n.3, 38-43) and above, notwithstanding DWAC's (and the trial court's) conclusory assertions, the trial court's finding that the TMTG Convertible Notes converted to TMTG stock pre-closing is unsupportable without Purported Annex D. Aside from Purported Annex D, the trial court relied on a draft unsigned purported TMTG convertible note, the Merger Agreement as amended, and the Transfer Agent Letter. *See* OB Ex. A at 27-28. These documents do not show that a conversion or TMTG stock issuance occurred. The Transfer Agent Letter merely provides instructions to issue *DWAC* stock—it does not show the TMTG Noteholders were ever issued TMTG stock. OB at 40. DWAC attempted the same sleight of hand at argument. A432, at 238-39. The draft unsigned note shows nothing about a conversion by the TMTG

Noteholders, and the Merger Agreement as amended (which was intentionally negotiated in an attempt to damage ARC (*supra* at 8)) merely contemplated that conversion and a TMTG stock issuance *would* occur before the Business Combination's closing, not that the conversion or issuance *actually occurred*. OB at 38-40. As this case shows, contracts—even those, like the Charter, calling for things to "automatically" occur—are not always performed in accordance with their terms. *Id.* at 39.

The trial court erred in admitting Purported Annex D. *Id.* at 30-37. DWAC's arguments to the contrary are unavailing.

1. ARC timely challenged the conversion of the TMTG Convertible Notes.

ARC timely raised the factual issue of whether the TMTG Convertible Notes actually converted and sought relevant discovery. The trial court thus erred in finding that ARC first raised this theory "after discovery closed." OB Ex. A at 28 n.122.

DWAC concedes the trial court's finding was erroneous. AB at 36. All DWAC can say to defend this error is (1) "the trial court knew" that its statement was wrong because it had required DWAC to produce documents in response to a motion to compel on this theory and (2) there is some unidentified "factual" difference in the theory post-discovery. *Id.* As to the former, DWAC proves ARC's point. Our courts do not intentionally make incorrect statements. It is undisputed

on appeal that ARC timely raised its theory early enough that the trial court ordered a production of documents based on ARC's theory. The trial court's finding that ARC's theory was raised after discovery is thus wrong.[4] Moreover, DWAC apparently produced no relevant documents in response to the trial court's order it now expressly recognizes in its appellate brief went to this very issue, and instead ambushed ARC after trial briefing with an unproduced and unpersuasive document. As to the latter attempt to explain away the trial court's error, DWAC provides no explanation of how the theory that TMTG Noteholders were not "sellers" was different before and after discovery. The only change was that discovery showed the conversion had never occurred. ARC made that point in its opening brief, and DWAC's response was to rely on an unproduced document of questionable provenance.

To be clear, ARC raised the issue of whether TMTG Noteholders should be included in the Conversion Ratio numerator from the beginning. Even though the Business Combination had not 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*

[4] This is another area in which the trial court appears to have been led astray by DWAC's erroneous factual arguments. *See* A359 (DWAC arguing that ARC "waited to raise its new theory in its pre-trial brief after the close of discovery").

outstanding TMTG Convertible Notes immediately prior to the Effective Time in connection with the Closing." A45, ¶ 29 (emphasis added). This put DWAC on notice that shares to be issued to the TMTG Noteholders were at issue.

ARC also sought information relating to the TMTG Convertible Notes, including their alleged conversion, in discovery. For example, at the hearing on ARC's motion to compel, in giving examples of "what documents could exist that are plainly relevant," ARC identified "the TMTG notes themselves" and "documents showing … whether the notes were converted, and if so, what shares were issued by TMTG or DWAC." A96-97. ARC noted that it had not received "any document showing how the shares flowed or what was issued to TMTG noteholders." A97. ARC further explained: "The fact that basic things like the notes themselves and documents proving what shares were issued to who in connection with the notes were not produced shows the defendants have utterly failed to meet their burden in proposing appropriate custodians and search protocols." A98. In granting the motion, the trial court found that documents relating to whether the TMTG Noteholders "are included in the conversion ratio" were relevant. A102; *see also* A107-09.

Aside from successfully moving to compel documents relating to the notes and their alleged conversion, ARC also requested documents (1) "concerning the basis or bases for [DWAC's] calculation (or lack thereof) of the Conversion Ratio

as set forth in the Proxy Statement or as [DWAC] claims it should be calculated now," (2) that DWAC "contend[s] support or establish the Conversion Ratio as 1.34:1 or any number other than 1.78:1," and (3) that DWAC "intend[s] to introduce into evidence or rely upon at trial in this Action." B20-21 (Request Nos. 11, 13, 18). ARC similarly sought "[a]ll Documents and Communications regarding calculation of the Conversion Ratio" from DWAC's transfer agent. AR21. Purported Annex D—which DWAC relied on at trial to support its Conversion Ratio calculation—and any communications relating to it would have been responsive to these requests.

Given these discovery requests, the fact that, even while sandbagging, the best purported evidence of conversion DWAC can identify is a draft unsigned note and the belatedly produced Purported Annex D shows that no conversion occurred.

DWAC's final argument regarding timing is equally unavailing. In an apparent effort to excuse itself from not producing Purported Annex D until after all trial briefing, DWAC misleadingly contends "[n]ot until ARC's post-trial [sic] *reply* briefing did it dispute whether conversion occurred." AB at 36 (emphasis added).[5] Yet in the very next sentence DWAC acknowledges that "[ARC's pre-trial] opening brief … stated: 'there is no evidence' that 'noteholders ever became TMTG stockholders.'" *Id.* ARC could not have been clearer. Even if this were all ARC's

[5] There was no post-trial briefing.

pre-trial opening brief said on this point—and it is not, *see* OB at 13 ("Plaintiff has not found any produced documents showing that any TMTG Noteholder was ever deemed a stockholder for even a second." (quoting A162-63))—that still would not have excused DWAC's eve-of-trial, *post-briefing* production of its key purported evidence.

The trial court erred in finding that ARC did not raise this issue until after discovery closed as a basis for not excluding Purported Annex D. *Id.* at 34-35. Given the lack of other evidence of conversion, this error was not harmless. *Id.* at 37-43.

2. DWAC's failure to timely produce Purported Annex D is not ARC's fault.

DWAC contends (again misleadingly) that "ARC does not dispute that it was 'on notice of the existence of Annex D for months after receiving it in a production from the transfer agent.'" AB at 37 (purportedly quoting OB Ex. A at 28 n.122). Not only does DWAC meaningfully misquote the trial court's opinion—the trial court actually wrote that ARC "was on notice of the existence of Annex D for months, after receiving *the letter referencing* it in a production from the transfer agent," OB Ex. A at 28 n.122 (italicized language was omitted by DWAC)—but DWAC ignores ARC's entire argument.

In its opening appeal brief, ARC contended:

> 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.

OB at 35. DWAC makes no effort to explain how this detailed argument constitutes not disputing the trial court's finding.

DWAC's contentions that ARC "should have grasped Annex D's significance," AB at 37, and "ARC is to blame for the late production of Annex D," *id.* at 38, are nonsensical. ARC could not have "grasped" Annex D's significance *because it did not have it*. Nothing in the header for the relevant portion of the Transfer Agent Letter—"Entry #6: Holders of TMTG common stock"—or the single paragraph that follows suggests that Annex D would have any information about TMTG *noteholders*. A706; *see also* OB at 40. The idea that ARC was supposed to review thousands of documents, identify other party's discovery deficiencies from a substantive review of one produced document among thousands, and if it did not then it would be punished, flips discovery obligations on their heads. It was DWAC's responsibility to search for and produce relevant documents. *See, e.g.*,

Wright v. SLWM, LLC, 341 A.3d 551, 565-66 (Del. Ch. 2025). It was DWAC's transfer agent's responsibility to do the same. If nothing else, it was certainly DWAC's job to *produce the document it was purportedly relying upon when drafting its trial brief*. ARC cannot be faulted for not identifying a needle in the haystack that Defendants produced only in part and only after reviewing ARC's reply pre-trial brief. Even ignoring these fundamental issues with DWAC's contention (and the trial court's finding), none of this excused DWAC's burden of showing that Purported Annex D was admissible. It was not. OB at 36-37. And the trial court reversibly erred in giving DWAC a free pass based on its erroneous conclusion that ARC was "on notice" of a document it had not received despite successfully moving to compel it and similar documents.

C. The trial court erred in requiring ARC to prove a negative.

Many of DWAC's arguments concerning the trial court's error in allocating to ARC the burden of proving a negative just restate DWAC's meritless contentions that Purported Annex D is properly in the record or that other evidence supposedly supports the conversion finding. *See* AB at 39-41. Those arguments should be rejected for the reasons discussed above and cannot excuse the trial court's legal error in requiring ARC to prove a negative. The court's bases for declining to exclude Purported Annex D are inherently linked to the burden-of-proof issue. Had the court properly allocated the burden of proof to DWAC, it would make little sense

to excuse DWAC's failure to produce its key evidence until after all trial briefing had concluded, particularly where ARC's *opening* trial brief contended there was no evidence the TMTG Noteholders became TMTG stockholders. A161-63, A161 n.16.

DWAC's cursory arguments actually addressing the burden-of-proof issue are without merit. First, DWAC contends *Oberly v. Howard Hughes Medical Institute*, 472 A.2d 366 (Del. Ch. 1984), "is directly on point and persuasive." AB at 40. Not so. *Oberly* involved a challenge to the validity of a non-stock corporation's amended and restated certificate of incorporation as not having been adopted in compliance with the corporation's bylaws. 472 A.2d at 385-87. There, the court found the law imposes a "rebuttable presumption" of validity where the adoption of an amended certificate of incorporation was based on "bylaws giv[ing] the appearance on the records of the corporation as having been adopted by those with the authority to do so, where they are regularly maintained in the records of the corporation thereafter and where they are relied upon in dealings with others as being the bylaws of the corporation." *Id.* at 386. Based on that presumption, and D.R.E. 301(a), the court imposed on the challenger the burden of proving the bylaws allegedly authorizing the certificate of incorporation amendment were invalid. *Id.* at 386-88. Notwithstanding this presumption, the court ultimately found that the challenger met this burden by pointing to the absence of documentary evidence of valid approval of

the bylaws. *Id.* at 388-90. DWAC has not pointed to any similar presumption that would apply to debt instruments, nor any legitimate record of the corporation, such as minutes, resolutions, or similar corporate documents showing that the TMTG stock was ever issued—instead relying on a draft, unsigned note and hearsay statements.

Even if *Oberly* were considered analogous, it does not excuse DWAC's failure to timely produce Purported Annex D or the trial court's refusal to exclude it. If anything, it suggests the opposite, as that decision was, like here, made on a paper record, *id.* at 368, but (unlike here) the challenger was able to meaningfully probe the bylaws' validity in discovery and the decision did not turn on a document produced only after all trial briefing concluded, *see id.* at 388-90.

Second, DWAC contends that the facts relating to conversion here—"records from the transfer agent and former TMTG noteholders—is accessible to ARC, not just DWAC." AB at 41. Wrong. Unlike DWAC, ARC does not have access to these materials outside of discovery. And none of the produced discovery materials showed that a TMTG stock issuance to TMTG Noteholders had occurred.

Finally, DWAC's suggestion that the "'exception' doctrine in contract law" does not apply here, AB at 41, strains credulity. DWAC attempts to limit Class B stockholders' anti-dilution rights by invoking a parenthetical clause that "exclude[es] any securities issued or issuable to any seller." A572. Apart from using

the word "except"—instead of "exclude"—it is difficult to imagine a clearer example of a party invoking a contractual exception. Indeed, DWAC's own authority shows that contractual "exclusions" are treated the same as "exceptions." *See AB Stable VIII, LLC v. Maps Hotels & Resorts One LLC*, 2020 WL 7024929, at *51 n.196 (Del. Ch. Nov. 30, 2020) ("Once the insured meets that burden, *the burden shifts to the insurer to establish a policy exclusion applies*." (emphasis added) (quoting *E.I. du Pont de Nemours & Co. v. Admiral Ins. Co.*, 1996 WL 111133, at *1 (Del. Super. Feb. 22, 1996))), *aff'd*, 268 A.3d 198 (Del. 2021).

D. The trial court's refusal not to exclude Purported Annex D deprived ARC of a fair trial.

Regardless of which party bore the burden of proof on the issue of conversion, the trial court's bases for declining to exclude Purported Annex D were clearly erroneous and deprived ARC of a fair trial. While nonsensically contending that "ARC was not asked to prove that an event never occurred," DWAC states that "ARC could have probed this discrete event in discovery and, *if it did not occur*, proven it with evidence." AB at 41 (emphasis added). But ARC attempted to probe this issue in discovery. When no documents or other evidence supporting conversion were discovered, ARC argued in its pre-trial opening brief that the absence of evidence of conversion shows it did not happen. A162-63 ("[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. [DWAC director and CEO] Swider was not aware of any either."); *see also* A192 (Swider testifying at deposition that he had not "seen any documents showing that TMTG convertible noteholders received TMTG equity"). ARC then reiterated these points in its pre-trial reply brief: "[t]he absence of such evidence meets Plaintiff's burden." OB at 15 (quoting A222-23). It was not until after ARC's pre-trial reply brief—the last trial brief submitted by anyone—and shortly before a paper-record trial that DWAC finally produced its key document.

Because of DWAC's sandbagging, not one witness was questioned about nor explained Purported Annex D's provenance, why it was created, when it was created, or testified in any way about it. Instead of faulting DWAC for its abject failure to produce the purported annex (until the eve of trial) and the letter to which it was supposedly attached (ever), the trial court ruled in DWAC's favor based on this purported evidence. DWAC's discovery abuse warranted—indeed mandated—sanctions. OB at 31-32 (collecting cases).

Given the circumstances surrounding Purported Annex D, the absence of any opportunity to examine any witnesses about it, and the lack of competent evidence supporting a finding that the notes actually converted and the TMTG Noteholders were actually issued TMTG stock, the trial court's evidentiary ruling constituted an

abuse of discretion and prejudiced the integrity of the proceedings. Reversal is required.

ARGUMENT ON CROSS-APPEAL

III. THE TRIAL COURT CORRECTLY INTERPRETED "OR OTHERWISE" CONSISTENT WITH THE ONLY REASONABLE INTERPRETATION ADVANCED AND ITS PLAIN MEANING.

A. Question Presented

Did the trial court correctly hold that the Conversion Ratio included all issued and issuable Class A stock so as to satisfy the purpose of the Charter's anti-dilution provision?

B. Scope of Review

The parties agree this Court reviews questions of law and interprets contracts *de novo*.

C. Merits of Argument

The Court of Chancery properly concluded that the Conversion Ratio Numerator included all issued and issuable Class A stock, subject to certain exceptions that do not apply here. DWAC misunderstands the provision's grammar, the basis of the trial court's decision, and the holdings of the decisions it cites.

1. DWAC ignores the Conversion Ratio's trigger, which confirms ARC's interpretation is correct.

Under the Charter, the Conversion Ratio is triggered "in 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." A572, § 4.3(b)(ii) (emphasis added). The wording and punctuation of this trigger make clear that the Charter treats issued or issuable Class A stock as one category and issued or issuable Equity-linked Securities as another. As the trial court correctly found, "[e]ither (1) an issuance or deemed issuance of Class A Common Stock or (2) an issuance or deemed issuance of an Equity-linked Security is sufficient [to trigger the Conversion Ratio]." OB Ex. A at 22.

DWAC's own public filings confirm this straightforward reading:

> In the case that additional shares of Class A common stock***, or equity-linked securities convertible or exercisable for Class A common stock,*** are issued or deemed issued in excess of the amounts offered in this prospectus and related to the closing of the initial business combination, the ratio at which founder shares shall convert into Class A common stock will be adjusted so that the number of Class A common stock issuable upon conversion of all founder shares will equal, in the aggregate, on an as-converted basis, 20% of the total number of all outstanding shares of common stock upon completion of the initial business combination, excluding [various categories of shares].

AR160 (emphasis added).

At the time of the Business Combination, Class A stock was issued in connection with the Compensation Notes, Legal Services Note, and Alternative Warrants, obviating any need to determine whether the notes and warrants were Equity-linked Securities. OB Ex. A at 10. The trial court correctly found that "ARC's interpretation of 'or otherwise' as meaning that shares are included regardless of the form in which the right to that share is created gives effect" to the

Conversion Ratio's language. *Id.* at 24. "Class A shares issued or issuable from the conversion or exercise of these securities *must be included in the numerator of the Conversion Ratio regardless*." *Id.* at 25 (emphasis added).

Simply put, Class A stock issued in connection with the Business Combination need not have been issued on account of an Equity-linked Security to trigger or be included in the Conversion Ratio. Thus, DWAC's grammatical gymnastics are all unnecessary for the Court to analyze.

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

For the same reasons detailed in ARC's brief, OB at 26-27, and above, *supra* § I.C, to the extent the Court concludes that both the trial court's and DWAC's interpretations are reasonable, *contra proferentem* requires the Charter to be interpreted against DWAC and in favor of stockholder protection. Accordingly, the trial court's decision would need to be affirmed.[6]

[6] In the introductory section of its brief, DWAC makes a passing argument that the trial court found that this portion of the Conversion Ratio is ambiguous. AB at 5. Not only is that contention inaccurate—the trial court made no such finding, *see* OB Ex. A at 21-25—but DWAC does not make any ambiguity-related argument in the applicable section of its brief. AB at 43-53. Any such argument was waived. *Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999).

3. The Numerator is not limited to shares resulting from Equity-linked Securities

Aside from the straightforward reasons discussed above, DWAC's argument that the Numerator is limited to Equity-linked Securities fails for other reasons. The Class B stockholders owned 20% of the company following DWAC's IPO. If all issued and issuable Class A stock, subject to certain exceptions not at issue, is counted as part of the Numerator, the Class B stockholders would continue to own approximately 20% of the company once the Conversion Ratio was triggered.

DWAC's litigation position contends this is a coincidence. Indeed, DWAC repeatedly characterizes the Conversion Ratio as "narrow" and "limited," by which it means "permits dilution." But the formula is neither narrow nor broad—it has a specific purpose embodied in its grammatical structure: to ensure that all issued or issuable Class A stock, regardless of source, is counted in the Numerator. The use of the word "otherwise" in the first parenthetical of the Numerator confirms that the parenthetical's purpose was to ensure that the sources of issued or issuable Class A stock were *not* limited to Equity-linked Securities (or in any other manner), consistent with the Conversion Ratio's anti-dilution goal.

The Conversion Ratio describes two types of Class A stock to be counted in the Numerator:

1. All shares of Class A stock issued, *and*

2. All shares of Class A stock issuable.

In the second type above, the parenthetical ("upon the conversion or exercise of any Equity-linked Securities or otherwise," A572) clarifies that the relevant issuable Class A stock could be issuable in any possible way, and specifically:

1. Upon conversion or exercise of any Equity-linked Securities, *or*

2. Otherwise.

The definitions of "otherwise" quoted by DWAC confirm that "otherwise" has an expansive meaning. AB at 46. For instance, substitute the definition "by other causes or means" for "otherwise":

1. ***Upon*** conversion or exercise of any Equity-linked Securities, *or*

2. ***By*** other causes or means.[7]

So, as the trial court held, there was no need to determine whether the securities at issue were Equity-linked Securities.

The passage's grammar supports this reading. The phrase "upon the conversion or exercise of any Equity-linked Securities or otherwise" contains two

[7] Like the prepositional phrase starting with "upon" that begins the parenthetical, "by other causes or means" is also a prepositional phrase functioning as an adverb. The other two definitions quoted by DWAC—"in a different way" and "in another manner"—are synonymous with "by other causes or means." *See id.* (quoting *Otherwise*, Black's Law Dictionary (12th ed. 2024)).

adverbs: first, the prepositional phrase[8] that starts with the preposition[9] "upon" ("upon the conversion or exercise of any Equity-linked Securities") functions as an adverb. Second, it is undisputed that "otherwise" is an adverb. AB at 46. So these adverbs modify the adjective[10] "issuable," showing that "upon the conversion or exercise of any Equity-linked Securities" and "otherwise" are the two ways by which Class A stock may be "issuable." The ultimate purpose, reflected in the grammar and the provision's purpose, is to ensure that the Numerator includes all issued or issuable Class A stock and is not limited to Equity-linked Securities, subject to later irrelevant exceptions.

4. DWAC misunderstands the Numerator's grammar.

Instead of a provision meant to ensure that the Numerator includes all issued or issuable Class A stock regardless of any connection to Equity-linked Securities, DWAC argues that the parenthetical is intended to limit the source of issuable Class A stock *only* to Equity-linked Securities. As part of that argument, DWAC argues that "otherwise" has a limiting, not a broadening meaning. AB at 46 (contending

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[8] "A phrase made up of a preposition and the noun it governs and having adjectival or adverbial value." *Prepositional Phrase*, WEBSTER'S II NEW COLLEGE DICTIONARY (2001) [hereinafter WEBSTER'S].

[9] "A word in some language that shows the relation between a substantive and a verb, an adjective, or another substantive, as English *at, by, in, to, from,* and *with*." *Preposition*, WEBSTER'S.

[10] AB at 48 (quoting "adverb" definition showing adverbs can modify adjectives).

that "otherwise" "modifies the nominalized verbs 'conversion or exercise,' meaning 'issuable' shares must stem from converting or exercising Equity-linked Securities, or through a similar mechanism, to be included in the Numerator"). But DWAC misunderstands the grammar of this provision.

"Otherwise" does not modify "conversion or exercise." According to DWAC, "otherwise" modifies "conversion or exercise." This is plainly wrong because it is nonsensical; DWAC never explains *how* "otherwise" modifies or qualifies the *meanings* of "conversion or exercise." AB at 46. An "otherwise conversion" or an "otherwise exercise" has no meaning.

The parenthetical's structure shows that "otherwise" does not modify "conversion or exercise." DWAC argues that "otherwise" is the third way by which Equity-linked Securities result in Class A stock. But this would require "otherwise" to leap backwards over the phrase "of any Equity-linked Securities" to serve as the third in an "x, y, or z" series of ways by which Equity-linked Securities can become Class A stock, as if this part of the parenthetical were written "conversion, exercise, or otherwise." But that is not the text. In the phrase "upon the conversion or exercise of any Equity-linked Securities or otherwise," "otherwise" immediately follows the entire prepositional phrase, rather than immediately following "conversion or exercise," the two words that, according to DWAC, "otherwise" supposedly modifies.

For "conversion or exercise" to be modified by the adverb "otherwise," DWAC's tortuous argument requires those words to have the force of verbs. So DWAC takes a byway through a linguistics concept ("nominalized verb") to explain *how* words like "conversion" or "exercise" come to be. As a matter of grammar, however, dictionaries identify "conversion" and "exercise" as nouns, not "nominalized verbs." *See, e.g.*, *Conversion*, WEBSTER'S (identifying "conversion" as a noun); *Exercise*, WEBSTER'S (identifying "exercise" as a noun). "Otherwise" in this provision cannot perform the adverbial function—modifying "conversion" and "exercise"—that DWAC assigns to it.

"Otherwise" is not a placeholder for "exchange." Equally unconvincing is the ultimate grammatical goal of DWAC's argument: that "otherwise" merely stands in for the word "exchangeable" from the definition of Equity-linked Securities, such that the entire parenthetical limits issuable Class A stock to stock resulting from Equity-linked Securities.

According to DWAC, because the *definition* of Equity-linked Securities includes the phrase "convertible, exercisable or exchangeable" and the Numerator includes "conversion or exercise," something in the first parenthetical must also mean "exchange." There are two problems with this assumption. First, if the Conversion Ratio was supposed to include "exchange" in the first parenthetical, the parties plainly knew how to do so without substituting "otherwise" for "exchange,"

since they had already done so in the definition of Equity-linked Securities ("convertible, exercisable or exchangeable"). A573. Indeed, the part of the definition of "Equity-linked Securities" not quoted by DWAC matches the structure of the Numerator, showing that "exchange" is not missing:

From Conversion Ratio Numerator (A572)	From "Equity-linked Securities" Definition (A573)
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) ….	Securities could be "deemed issued" for purposes of the conversion rate adjustment if such shares are **issuable upon the conversion or exercise of** convertible securities, warrants or similar securities.[11]

Second, DWAC makes no argument why "otherwise" should function grammatically as the replacement or synonym of a single word. "[O]therwise tends to be quite broad in scope." *Otherwise*, BLACK'S LAW DICTIONARY (12th ed. 2024).

Accordingly, there is no need to force "otherwise" to mean only "exchange." DWAC's argument that "otherwise" is merely one of the three ways by which Equity-linked Securities can become Class A stock (*i.e.*, by conversion, exercise, or otherwise) is ungrammatical and erroneous.

[11] Note also that "convertible securities, warrants or similar securities" from the definition all fit within "Equity-linked Securities" in the Numerator's first parenthetical, further evidencing that "or otherwise" captures something *beyond* Equity-linked Securities.

5. "Otherwise" protects against dilution.

The use of "otherwise" protects the Class B stockholders from dilution by ensuring that the numerator includes *all* issued or issuable Class A stock, regardless of derivation from an Equity-linked Security.

ARC's reading does not erase the definition of Equity-linked Securities, as DWAC claims. While DWAC notes that the Charter uses the term "Equity-linked Securities" only in the Conversion Ratio provisions, that term occurs in different places for different purposes. "Equity-linked Securities" is used in the trigger provision to show one of the two circumstances *when* the Conversion Ratio applies. But the phrase "upon the conversion or exercise of any Equity-linked Securities or otherwise" clarifies that the issued or issuable Class A stock at the time of the conversion is not *limited* to Equity-linked Securities. In other words, the Class B stockholders will not be diluted at the time of conversion if Class A stock is issued or issuable from some security that does not qualify as an Equity-linked Security. And if the drafters wanted to *exclude* anything other than Equity-linked Securities, they knew how to do so, as shown later in the same provision ("***excluding*** any securities issued or issuable to …"). A572 (emphasis added).

Thus, the Numerator's first parenthetical clarifies that issued or issuable Class A stock is not *restricted* to Equity-linked Securities. That is not creating surplusage, but rather clarification or reinforcement. A parenthetical supporting the broad nature

of the prior language does not change the meaning. *See, e.g.*, *Martin Marietta Materials, Inc. v. Vulcan Materials Co.*, 56 A.3d 1072, 1128 (Del. Ch. 2012) ("In opinions, as in contracts, redundancy sometimes adds clarity."), *aff'd*, 68 A.3d 1208 (Del. 2012).

6. DWAC misstates the basis of the Court of Chancery's ruling.

DWAC errs in accusing the Court of Chancery of "reason[ing] that the term 'or otherwise' modified the regular noun 'Equity-linked Securities.'" AB at 47. The court nowhere stated that "or otherwise" modified "Equity-linked Securities," and certainly not at the page cited by DWAC. DWAC never raised these arguments below, so the Court of Chancery never had occasion to consider them. The court correctly concluded, however, that "it does not matter whether these are Equity-linked Securities because the only relevant question is whether Class A shares are issued or issuable." OB Ex. A at 21. While the grammar supports ARC's explanation of "or otherwise," the Court of Chancery never needed to reach that issue.

7. DWAC misstates the rulings of the decisions it cites.

DWAC's legal arguments fare no better than its grammar arguments. On the basis of a single Delaware decision interpreting the word "otherwise," *Sullivan Money Mgmt., Inc. v. FLS Hldgs. Inc.*, 1992 WL 345453, at *4 (Del. Ch. Nov. 20, 1992), *aff'd*, 628 A.2d 84 (Del. 1993) (TABLE), DWAC argues that "Delaware

courts" reject broad readings of that word. According to DWAC, the court there held that "when 'otherwise' follows a single particular, it should be 'construed narrowly,' such as 'in like *manner.*'" AB at 50 (emphasis in original). Not true. Although *Sullivan* included a prefatory discussion of the *eiusdem generis* canon, the court never relied on that canon or its absence as the basis for its ruling. *Sullivan*, 1992 WL 345453, at *4. The disputed provision lacked an *eiusdem generis* structure—*i.e.*, "otherwise" following a series of particulars (*e.g.*, "x, y, z, or otherwise")—that would have mandated a narrow reading. *Id.* at *2, *4. The plaintiffs therefore argued that "otherwise" should automatically have a broad meaning. *Id.* The court rejected that argument. To reach its decision, however, the court left this entire discussion behind to rule on a basis that had nothing to do with the grammatical structure or the *eiusdem generis* canon. *See id.* at *7. Nothing in *Sullivan* shines any light on the Conversion Ratio.

As for *Fischer v. United States*, 603 U.S. 480 (2024), DWAC argues that "the U.S. Supreme Court rejected the argument that the term 'or otherwise"' can be untethered from the words preceding it." AB at 50. Because the only grammatical reading of the Numerator requires "otherwise" to modify "issuable," ARC does not disagree grammatically. But the grammatical structure at issue in *Fischer* differs from the Numerator, ruling out any further relevance of that decision. 603 U.S. at 486 (analyzing statute criminalizing "(1) alter[ing], destroy[ing], mutilat[ing], or

conceal[ing] a record, document, or other object, or attempt[ing] to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) *otherwise* obstruct[ing], influenc[ing], or imped[ing] any official proceeding, or attempt[ing] to do so." (emphasis added)). Moreover, the Court considered both the specific and broader context in its exercise of statutory interpretation. *Id.* at 487-98. Here, the specific context was preventing dilution to Class B stockholders and the Charter must be read with that purpose in mind.

8. DWAC forfeited its argument regarding the "second Numerator condition."

Finally, DWAC argues that the court eliminated what DWAC calls "the second Numerator condition" ("related to or in connection with the consummation of the initial Business Combination," A572). AB at 51. But DWAC never made that argument below.

According to DWAC, the "trial court declined to assess whether Compensation Notes, Legal Services Notes, and Alternative Warrants were 'in connection' with the Business Combination's closing, holding they could be included 'regardless.'" *Id.* DWAC confuses two separate provisions, however. At the page of the decision cited by DWAC, the trial court stated only that it did not have to "determine if the Legal Services Notes, Alternative Warrants, and Compensation Notes *fall within the definition of Equity-linked Securities*," OB Ex. A at 25 (emphasis added), not within the so-called "second Numerator condition."

See A286, A286-93 (contending that "DWAC [e]xcluded [t]hree [c]ategories of [n]otes"—the Alternative Warrants, Legal Services Notes, and Compensation Notes—"[t]hat [w]ere [n]ot Equity-linked Securities").

The Numerator and the definition of Equity-linked Securities *both* include some variation of the phrase "in connection with the initial Business Combination," however—and DWAC only made an argument in connection with the latter in the trial court. Because DWAC did not challenge in the trial court whether the shares issued on account of those warrants and notes were issued "in connection with the consummation of the initial Business Combination," DWAC has forfeited this argument.

IV. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN AWARDING ARC A MOOTNESS FEE.

A. Question Presented

Did the trial court abuse its discretion in awarding ARC a $75,000 mootness fee when its complaint caused DWAC to issue a corrective mooting disclosure?

B. Scope of Review

This Court reviews an attorney fee award for abuse of discretion. AB at 54 (citing *Sugarland Indus., Inc. v. Thomas*, 420 A.2d 142, 149 (Del. 1980)).

C. Merits of Argument

The parties agree on the relevant standards for determining whether a mootness fee is appropriate: (1) the suit must have been meritorious when filed; (2) the action mooting the claim must have been taken before a judicial resolution of the claims; and (3) the resulting benefit must have been causally related to the suit. *See* AB at 55 (citing *Allied Artists Pictures Corp. v. Baron*, 413 A.2d 876, 878 (Del. 1980)). DWAC does not challenge any of these factors. That is dispositive.

Instead, DWAC contends that its "post-litigation supplemental disclosures were not 'plainly material' and thus did not confer a 'substantial' benefit." *Id.* at 56 (quoting *In re Trulia, Inc. S'holder Litig.*, 129 A.3d 884, 898 (Del. Ch. 2016)). But DWAC identifies no abuse of discretion. The trial court correctly concluded that ARC's disclosure claims were meritorious when filed and that they conferred a sufficient benefit to warrant the modest fee awarded. The court found it was

reasonably conceivable that these disclosures "put forward an incorrect conversion ratio and left DWAC's stockholders with uncertainty around the consideration they would receive in the merger" and "the ratio at which Class B common stock would be converted into Class A shares, and the dilutive effect of that conversion, would have been material." AB Ex. F at 12-13. Tellingly, DWAC does not contend that the disclosures were not materially misleading or that its post-litigation supplemental disclosures were not made to moot ARC's claim.

In setting the modest $75,000 fee, the court cited numerous post-*Trulia* cases supporting an award in the range of $75,000-$100,000 for limited supplemental disclosures. *Id.* at 15 & n.66 (collecting cases). The court then found that the supplemental disclosures DWAC provided in response to ARC's claim "gave stockholders important information about the potential conversion ratios the parties advanced, which allowed stockholders to contextualize what those ratios could mean for their ownership in the combined company," *id.* at 14; "provide[d] important context"; and "concern[ed] the very consideration that stockholders stood to gain in the merger, which arguably support[ed] a higher mootness fee than the $75,000 awarded in *Rodden*," *id.* at 16 (citing *Rodden v. Bilodeau*, C.A. No. 2019-0176-JRS, at 21 (Del. Ch. Jan. 27, 2020) (TRANSCRIPT)). There was no abuse of discretion.

CONCLUSION

This Court should reverse the trial court's erroneous interpretation of "seller" within the Charter and remand for further proceedings on damages. If this Court declines to interpret "seller" in the manner ARC proposes, ARC submits the Court should still reverse the trial court's decision placing the burden of proving a negative on ARC, find that DWAC did not meet its burden of showing that TMTG's convertible notes actually converted, and remand for further proceedings on damages. The Court should affirm the trial court's (1) inclusion of various issued Class A stock in the Conversion Ratio Numerator, consistent with the provision's purpose and plain meaning, and (2) mootness fee award.

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