EFiled: Dec 15 2025 02:09PM EST
Filing ID 78000053
Case Number 375,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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

CROSS-APPELLANT'S REPLY BRIEF ON CROSS-APPEAL

John L. Reed (I.D. No. 3023)
Ronald N. Brown, III (I.D. No. 4831)
DLA PIPER LLP (US)
1201 North Market Street, Suite 2100
Wilmington, DE 19801
(302) 468-5700
(302) 394-2341 (Fax)
john.reed@us.dlapiper.com
ronald.brown@us.dlapiper.com

Counsel for Appellee/ Defendant-Below/ Cross-Appellant
Digital World Acquisition Corp.

DATED: December 15, 2025

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PRELIMINARY STATEMENT[1]

ARC's Cross-Appeal Answering Brief confirms that DWAC correctly excluded three categories of Class A shares from the Conversion Ratio Numerator: (1) compensation notes issued to directors, (2) notes issued to legal counsel, and (3) warrants issued to settle threatened litigation. None of these instruments were issued in a financing transaction in connection with the initial Business Combination. All were instead ordinary operational expenses that ARC, as Sponsor, was required to bear. The Charter therefore gave ARC no antidilution protection against them. ARC's brief offers no persuasive reason to find otherwise.

ARC perpetuates the myth that the Conversion Ratio serves as a sweeping anti-dilution device. It argues that DWAC's Charter must preserve ARC's 20% founder stake against dilution from any and all post-IPO issuances, no matter the purpose. But the Conversion Ratio is narrowly drawn: triggered only by Closing-related issuances and thus similarly limited in the Numerator by shares issuable via Equity-linked Securities (a defined term limited to securities issued in a financing transaction in connection with the Closing).

[1] Capitalized and abbreviated terms have the same meaning as in DWAC's Answering Brief on Appeal and Opening Brief on Cross-Appeal (cited as "AB"), and ARC's Reply Brief on Appeal and Answering Brief on Cross-Appeal (cited as "CA/AB").

ARC also has no answer to the massive surplusage that would result from its view of the text. ARC concedes that, on its reading, the phrase "or otherwise" completely erases the preceding requirement that Numerator shares be issued or issuable "upon the conversion or exercise of any Equity-linked Securities." Yet, ARC cannot explain why the drafters took pains to define the term "Equity-linked Securities"—and invoke it repeatedly—if it was meant to do no work at all. Nor does ARC have a response to Delaware and federal courts rejecting efforts to wield an "or otherwise" phrase to completely nullify the specific language that precedes it. ARC's interpretation must be rejected.

Separately, the trial court abused its discretion in granting ARC a $75,000 mootness fee award, and ARC's Answering Brief confirms as much. It points to no supplemental disclosure that was "plainly material," nor does it argue the trial court found them so. Without such benefit, any fee award is a categorical abuse of discretion.

ARGUMENT

I. THE TRIAL COURT ERRED BY NOT EXCLUDING LEGAL SERVICES NOTES, COMPENSATION NOTES, AND ALTERNATIVE WARRANTS FROM THE CONVERSION RATIO NUMERATOR

DWAC's interpretation of the first Numerator condition—limiting it to shares issued or issuable via Equity-linked Securities—aligns with the text and structure. By contrast, ARC's broader reading renders large swaths of the Conversion Ratio mere surplusage and flouts both the nearest-reasonable-referent canon and *ejusdem generis*. Nor is there any merit to, or support in the Conversion Ratio for, ARC's notion that the Court must adopt a construction that would ensure Class B stockholders retain 20% of the Company. That is a fiction. Finally, ARC wrongly claims that *contra proferentem* would resolve any ambiguity in its favor.

A. The Text Supports DWAC's Interpretation

ARC cannot dispute that DWAC's interpretation is the only one that gives independent meaning to every word in the provision. The first Numerator condition limits Class A stock to those "*issued or issuable (upon the conversion or exercise of any Equity-linked Securities or otherwise)*." (A572, § 4.3(b)(ii).) The Charter expressly defines Equity-linked Securities as those "convertible, exercisable or exchangeable for shares of Class A common stock issued in a financing transaction in connection with the initial Business Combination[.]" (A573.)

The prepositional phrase being modified—"*upon the conversion or exercise of any Equity-linked Securities*"—contains two nominalized verbs ("conversion" and "exercise") paired with the noun "Equity-linked Securities." The adverb "otherwise" follows and means "in a different way." (AB at 46.) It thus extends the category to other mechanisms or actions by which Equity-linked Securities may yield Class A shares, such as exchange. It does not sweep in shares issued or issuable by means unrelated to Equity-linked Securities.

ARC's principal objection is a strawman. ARC protests that DWAC's reading would yield the nonsensical phrase "an otherwise conversion" or an "otherwise exercise." (CA/AB at 35.) The operative language, however, is not "otherwise conversion," but "conversion or exercise . . . or otherwise." (A572.) It is conventional and perfectly sensible to say "upon the conversion or otherwise" when the speaker means to expand the category to other mechanisms.

ARC next contends that "or otherwise" cannot modify the phrase "upon the conversion or exercise" because it would have to "leap backwards" over the intervening noun "Equity-linked Securities." (CA/AB at 35.) That objection lacks merit and collapses on itself. Even ARC now concedes that "otherwise" cannot modify "Equity-linked Securities." (*Id*. at 39.) The only remaining candidates in the preceding phrase are the nominalized verbs "conversion" and "exercise." Those are precisely the terms "otherwise" (an adverb) naturally modifies.

ARC's interpretation fares far worse on its own terms. On ARC's reading, "or otherwise" must skip over not only the immediately preceding noun "Equity-linked Securities," but also the nominalized verbs "conversion" and "exercise," to reach the distant adjective "issuable" at the beginning of the sentence (and outside the parenthetical!). (CA/AB at 34.) That construction offends the nearest-reasonable-referent canon: When a modifier can logically attach to more than one antecedent, it attaches to the closest one capable of bearing it. *See* A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 152–53 (2012). Here, the closest available antecedents are the nominalized verbs "upon the conversion or exercise," not the far-removed "issuable." So "otherwise" modifies the prepositional phrase by expanding it to include the other means by which an Equity-linked Security can become a Class A share.

B. Context Favors DWAC's Interpretation

ARC's construction produces pervasive surplusage. Under ARC's view, the phrase "or otherwise" sweeps in every Class A share that could ever be issued, regardless of source. (CA/AB at 34.) That reading renders pointless the eleven-word parenthetical—"upon the conversion or exercise of any Equity-linked Securities or otherwise." The Conversion Ratio Numerator would mean exactly the same thing if it simply read "Class A Shares issued or issuable" and omitted the parenthetical entirely. Delaware courts reject interpretations that "render [a]

parenthetical little more than mere surplusage." *See Julian v. E. States Const. Servs., Inc.*, 2008 WL 2673300, at *14 (Del. Ch. July 8, 2008).

Worse still, ARC's reading renders the Charter's carefully drafted definition of "Equity-linked Securities" entirely meaningless.[2] ARC concedes that the term only appears in the Conversion Ratio. (CA/AB at 38.) And ARC does not dispute that a defined term must be given operative effect. Yet, under ARC's construction, Equity-linked Securities has no effect: Every Class A share issued or issuable counts in the Numerator whether or not it has any connection to an Equity-linked Security.

ARC has no real answer to this surplusage argument. To avoid the obvious impact of its position—i.e., that the defined term "Equity-linked Securities" does no work in the Charter at all—ARC pivots to the Conversion Ratio's trigger provision. (*Id.*) There, ARC insists, Equity-linked Securities does work "to show one of the two circumstances when the Conversion Ratio applies." (*Id.*) And since the trigger supposedly limits itself in some way to Equity-linked Securities, ARC reasons, the Numerator "clarifies" that it sweeps more broadly and is unbound by that supposed restriction. (*Id.*)

[2] The Charter defines "Equity-linked Securities" to mean "any debt or equity securities that are convertible, exercisable or exchangeable for shares of Class A common stock issued in a financing transaction in connection with the initial Business Combination, including but not limited to a private placement of equity or debt." (A573, § 4.3(b)(ii).)

ARC's "clarification" argument badly misreads the Conversion Ratio's trigger provision. The Conversion Ratio activates when either (i) Class A shares, or (ii) Equity-linked Securities "are issued *or deemed issued*." (A572 (emphasis added).) The Conversion Ratio itself makes clear that securities (including Class A shares) are "*deemed issued*" whenever they "are *issuable* upon the conversion or exercise of convertible securities, warrants or similar securities." (A573 (emphasis added).) So the trigger provision is not restricted to Equity-linked Securities at all. Delete the phrase "or Equity-linked Securities," and the Conversion Ratio would still activate for the issuance of an Equity-linked Security because it is captured through the broader language covering all Class A shares "issued *or deemed issued*." (A572 (emphasis added).) That catch-all is wide enough to sweep in all manner of issuable securities, Equity-linked Securities included.[3] The term "Equity-linked Securities" thus does no work in the trigger provision that would require "clarification" in the Numerator, as ARC erroneously claims. (CA/AB at 38.)

[3] ARC's clarification argument also produces a commercially unreasonable and absurd result. Under its reading, the parenthetical in the Numerator "clarifies" that the Numerator sweeps more broadly than the trigger provision and counts all issued or issuable Class A shares, including those unconnected to any Equity-linked Security. (CA/AB at 38.) But "interpretations that are commercially unreasonable or that produce absurd results must be rejected." *Manti Hldgs. LLC v. Authentix Acquisition Co., Inc.*, 261 A.3d 1199, 1211 (Del. 2021). And it is absurd to treat certain dilutive issuances as serious enough to be included in the Numerator (and thus increase ARC's conversion rate) yet not serious enough to trigger the Conversion Ratio in the first place.

ARC's inability to find a purpose for Equity-linked Securities confirms its reading renders the definition superfluous from start to finish. The drafters could simply have provided that the Conversion Ratio is triggered when Class A common stock is "issued or deemed issued" and that the Numerator includes all Class A common stock "issued or issuable." There was no reason to define the term Equity-linked Securities, or use it anywhere in the Charter. Because ARC's reading reduces an expressly defined term, its repeated invocation, and an entire parenthetical surrounding it to pure surplusage, it is presumptively unreasonable. *See Osborn ex rel. Osborn v. Kemp*, 991 A.2d 1153, 1159 (Del. 2010) (courts must "not [] render any part of the contract mere surplusage").

DWAC's reading, by contrast, produces no surplusage. The term "Equity-linked Securities" was defined precisely because the Numerator is narrower than the trigger provision. The Numerator counts only Class A shares that are issued or issuable through Equity-linked Securities. It is true, of course, that the separate reference to "Equity-linked Securities" in the trigger provision is also redundant under DWAC's interpretation. But as ARC itself acknowledges, drafters sometimes repeat terms for clarity. (CA/AB at 39 (citing *Martin Marietta Materials, Inc. v. Vulcan Materials Co*., 56 A.3d 1072, 1128 (Del. Ch. 2012), *aff'd*, 68 A.3d 1208 (Delo. 2012)).) What matters is that, under DWAC's interpretation, the defined

term—"Equity-linked Securities"—has essential work to do in the Numerator. Under ARC's interpretation, it has none.

Finally, ARC claims DWAC's interpretation creates surplusage because "otherwise" would be unnecessary if it only captures "exchange." (CA/AB at 37.) That is wrong. Under DWAC's reading, "otherwise" has clear work to do: It picks up mechanisms beyond conversion or exercise—most obviously exchange—by which Equity-linked Securities can yield Class A shares. ARC responds that the drafters knew how to say "exchangeable," so "otherwise" cannot serve that function. (CA/AB at 36.) This objection proves nothing. Choosing a catch-all rather than listing every variant is a commonplace drafting decision.

In the end, the interpretative choice is stark. Any modest overlap in DWAC's interpretation involves a single word ("otherwise"). By contrast, ARC cannot explain why, on its interpretation, the drafters carefully defined and repeatedly invoked a term that does no work anywhere in the Charter. Nor can ARC explain why there is a pointless eleven-word parenthetical. The surplusage imbalance is not a close call: it decisively favors DWAC.

C. Precedent and Canons of Construction Support DWAC's Interpretation

ARC's expansive interpretation of "or otherwise" runs headlong into *ejusdem generis*. ARC insists that "otherwise" must modify "issuable." (CA/AB at 34.) But even assuming that is correct (and it is not), it does not answer the question of

whether "otherwise" sweeps in all Class A shares, no matter the source, or only those similar to shares issued "upon the conversion or exercise of any Equity-linked Securities." *Ejusdem generis* points toward the narrow reading.

ARC does not dispute that this Court has held that when general language follows a specific list, the general terms "are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned." *Delaware Bd. of Nursing v. Gillespie*, 41 A.3d 423, 427–28 (Del. 2012). *See also Yates v. United States*, 574 U.S. 528 (2015). Nor can ARC deny that the phrase "or otherwise" appears immediately after a specific enumeration: "upon the conversion or exercise of any Equity-linked Securities." (A572.) The canon therefore limits "otherwise" to mechanisms of the same character—that is, other ways Equity-linked Securities can yield Class A shares (such as exchange). It does not, as ARC insists, throw open the door to every issued or issuable Class A share, no matter its source. *See 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); *Fischer v. United States*, 603 U.S. 480, 490 (2024).

ARC's attempt to sidestep *Sullivan* falls flat. ARC argues that *Sullivan* is different because the provision there lacked a classic "*eiusdem* [sic] *generis* structure"—that is, it had only one specific term preceding "otherwise." (CA/AB at 40.) But that only hurts ARC. Even with "otherwise" following a single specific

term, *Sullivan* still rejected the boundless reading of "otherwise." 1992 WL 345453, at *4. The structure here follows the classic *ejusdem generis* pattern ("conversion or exercise"), making the case for narrowly construing "otherwise" even stronger.

ARC similarly has no response to *Fischer*. ARC makes the cursory assertion that "the grammatical structure at issue in *Fischer* differs." (CA/AB at 40.) But it never explains how, or why, that should matter (because it does not matter). Whatever grammatical distinctions exist, the core principle announced in *Fischer* governs here: Courts do not "eliminat[e] specific terms because of broad language that follows them, rather than limiting the broad language in light of narrower terms that precede it." *Fischer*, 603 U.S. at 490. But that is precisely what ARC asks the Court to do: eliminate the preceding phrase "upon the conversion or exercise of Equity-linked Securities" because it is followed by "or otherwise." (CA/AB at 34.)

ARC also argues that both *Sullivan* and *Fischer* considered the broader contractual context. (CA/AB at 40–41.) But that observation, too, cuts against ARC. The contractual context here is that Equity-linked Securities is a defined term, and it must be given some operative effect. The only reading that does so is DWAC's, which is the one *ejusdem generis* already compels: "or otherwise" extends only to other ways Equity-linked Securities can produce Class A shares.

ARC protests that the Conversion Ratio exists to "prevent[] dilution." (CA/AB at 41.) But that proves nothing. Everyone agrees the provision is antidilutive. The question is how far and to which categories the protection extends. And on that score, adhering to the text, avoiding surplusage, *ejusdem generis*, and precedent point in the same direction: The protection is narrow.

D. ***Contra Proferentem*** **Supports DWAC's Interpretation**

Even if ARC's broad reading could somehow be deemed reasonable (it cannot), *contra proferentem* would still resolve any ambiguity against ARC. (AB at 28–29 (citing *Shiftan v. Morgan Joseph Hldgs, Inc.*, 57 A.3d 928, 936–37 (Del. Ch. 2012)).) ARC argues that *Shiftan* did not categorically bar *contra proferentem* in favor of investors in the preferred-stock setting. (CA/AB at 10–11.) But ARC cannot dispute that *Shiftan* recognized *contra proferentem* is in tension with the presumption against preferential rights and declined to apply it in favor of investors. 57 A.3d at 937. The same tension is present here, and the Court should decline to apply it in favor of ARC.

ARC also argues that Class B enjoys no preference over Class A. (CA/AB at 11.) That too is wrong. The Conversion Ratio is itself a powerful preference: It entitles Class B holders to additional Class A shares to protect their economic position, necessarily at the expense of Class A stockholders. A feature that dilutes Class A to benefit Class B is preferential. (*See* AB at 29 (citing *Shintom Co., Ltd. v.*

Audiovox Corp., 888 A.2d 225, 228 (Del. 2005)).) Any lingering doubt about the Conversion Ratio should thus be construed in favor of Class A and against the preference.

E. ARC's Claim That Class B Stockholders Must Own 20% of DWAC is Wrong

Underlying ARC's interpretation—as well as the trial court's—is the premise that Class B stockholders were guaranteed roughly 20% of the Company's outstanding common stock in perpetuity. (CA/AB at 32; Op. at 24.) That premise drives ARC's insistence that Class B stockholders must be issued one share for every four shares—i.e., 25% of *all* issued or issuable shares. (CA/AB at 32.) The trial court made this explicit, adopting a broad reading of "otherwise" because "the point" of the Conversion Ratio is "[f]or the Class B stockholders to maintain 20% of the company's common stock." (Op. at 24.)

That premise is fiction. Look no further than the Conversion Ratio's trigger provision to see why:

Conversion Ratio Trigger
[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 [the conversion] ratio…

(A572, § 4.3(b)(ii) (highlighting added).) If the Conversion Ratio had intended to lock in Class B ownership at 20% no matter what, it would not have included the green-highlighted language. That clause makes plain that the Conversion Ratio does not activate for every dilutive share issuance. Instead, the Conversion Ratio activates only if additional shares were issued "*in connection with the closing of the Corporation's initial Business Combination*." (*Id*. (emphasis added).)

It makes no sense to claim, as ARC does, that the "purpose" of the Conversion Ratio is "to ensure that all issued or issuable Class A stock, regardless of source, is counted in the Numerator." (CA/AB at 32.) Had the Compensation Notes, Legal Notes, and Alternative Warrants been the only post-IPO issuances, the Conversion Ratio would not have activated (because these were not issued in connection with closing). And if the Conversion Ratio did not activate, nothing would be counted. So ARC's sweeping statement of purpose is contradicted by the Conversion Ratio's own trigger. ARC predictably ignores this argument in its Answering Brief.

ARC also has no answer to the many limitations in the Numerator that undermine its view of the Conversion Ratio as a sweeping anti-dilution provision:

Conversion Ratio Numerator
[T]he 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 denominator, i.e., issued and outstanding Class B shares].

(A572-73, § 4.3(b)(ii) (highlighting added).)

ARC brushes the Numerator's limitations aside, saying they are "not at issue." (CA/AB at 32.) But that is wrong on the facts. This litigation involves shares "issued or issuable to any seller" (Op. at 25), "private placement units" issued to ARC and its affiliates (*id.* at 28), and whether shares were issued or issuable "in connection with" the Business Combination closing (*id.* at 21).

More fundamentally, ARC's argument is beside the point. The Numerator's many restrictions bust the myth that Class B stockholders were guaranteed 20%. If drafters had wanted to protect ARC and Orlando from all dilution, they would have said so. They did not. Their choice of narrow, heavily conditioned language was deliberate, and it cannot be wished away by invoking an imaginary "purpose" to preserve 20% at all costs.

The trial court's reliance on this imagined "keep-it-at-20%" purpose is what led it astray. (Op. at 24.) The error is unmistakable in the court's bottom-line holding: It declared that "the Conversion Ratio considers all issued or issuable shares of Class A Common Stock, with two defined exceptions." (*Id.* at 25.) That statement is wrong. It overlooks the second Numerator condition: that shares be "related to or in connection with the consummation of the initial Business Combination." (A572.)

ARC cannot defend the trial court's error. Instead, it protests that DWAC did not argue below that the second Numerator condition should exclude Legal Services Notes, Compensation Notes, and Alternative Warrants. (CA/AB at 41–42.) But this misses the point. Throughout the litigation, DWAC argued that these notes and warrants fall outside the Numerator precisely because they were not issued in a financing transaction and not issued in connection with closing. (A281–283.) The trial court rejected this argument because it believed a narrow reading of "otherwise" would frustrate "the point" of maintaining Class B at approximately 20% stock. (Op. at 24.) Had the trial court recognized that the very same "in connection with" limitation appears explicitly in the Numerator's second condition, it would not have dismissed DWAC's first-condition argument based on an errant view of the Conversion Ratio's purpose and scope.

F. ARC Cannot Distinguish Between "Issued" and "Issuable"

ARC claims the trial court's analysis of "or otherwise" does not matter because Class A shares were actually "issued" in connection with the Legal Services Notes, Compensation Notes, and Alternative Warrants. (CA/AB at 30.) ARC does not expand on this argument. But, in any case, it fails for three reasons.

First, it is factually wrong. ARC identifies no record evidence that shares relating to Legal Services Notes, Compensation Notes, and Alternative Warrants were issued before the Business Combination closed. The only citation ARC offers—page ten of the trial court's opinion—undermines its position. (*Id.* (citing Op. at 10).) The trial court found only that the notes and warrants themselves were issued, not any subsequent conversion to Class A shares. (Op. at 10.)

Second, ARC's distinction is irrelevant. The Numerator states that Class A Shares "issued or issuable" must stem from "the conversion or exercise of any Equity-linked Securities or otherwise." (A572.) The force DWAC's argument has against "issuable" shares unrelated to Equity-linked Securities applies equally to shares already "issued."

Third, the argument is forfeited. ARC never contended below that "issued" shares must be treated differently than "issuable" ones. The absence of such argument is plain from the trial court's opinion and the parties' briefing, which use the phrase "issued or issuable" as a unified concept and never hints at a distinction.

(*See, e.g.*, Op. 22-23 (summarizing ARC's response to DWAC's argument that "only shares issued or issuable due to an Equity-linked Security should be included in the numerator").

* * *

In sum, this Court should reverse the trial court's holding that "or otherwise" expands the Numerator to include all issued or issuable Class A shares, even those unconnected to Equity-linked Securities. The Court should direct the trial court on remand to determine whether the Compensation Notes, Legal Services Notes, and Alternative Warrants were issued in a financing transaction in connection with the closing of the initial Business Combination and therefore constitute shares issued or issuable "upon the conversion or exercise of any Equity-linked Securities or otherwise."

II. THE TRIAL COURT ERRED BY AWARDING ARC A MOOTNESS FEE

The trial court erred in awarding ARC a mootness fee for DWAC's supplemental disclosures. Supplemental disclosures warrant a mootness fee award only if they confer a "substantial" benefit by addressing a "plainly material misrepresentation or omission" in the original disclosure. (AB at 55 (citing *In re Trulia, Inc. S'holder Litig.*, 129 A.3d 884, 898 (Del. Ch. 2016)). *Trulia*'s "plainly material" standard requires that it "not be a close call that the supplemental information is material." 129 A.3d at 898. The trial court made no finding that any of DWAC's supplemental disclosures were "plainly material."

DWAC's supplemental disclosures disclosed only "ARC's contention that a 1.78:1 conversion ratio applied" and "included a table showing the percentage ownership of public stockholders in the combined entity under different conversion ratios." (AB Ex. F at 13.) In its fee opinion, the trial court found that these supplemental disclosures "gave stockholders important information" that could have helped them "contextualize" the ratios, and that it was "reasonably conceivable" that the challenged disclosures "would have been material." (*Id.* at 12, 14.) Yet the trial court did not find any supplemental disclosures met the standard of "plainly material." ARC does not contend otherwise in response.

Moreover, in its post-trial opinion, the trial court stated that it "cannot conclude that the descriptions of the Conversion Ratio in the Proxy Statement were materially false or misleading," and found "no basis to conclude" that any alleged misstatements about the Conversion Ratio "would have been important to DWAC stockholders in deciding how to vote." (Op. at 37-38.) Thus, the supplemental disclosures here cannot have been plainly material—and ARC's disclosure claim was not meritorious when filed—because there were no plainly material misstatements in the first place.

Nor did ARC confer any substantial corporate benefit here because it acted purely out of self-interest. As the trial court explained, "ARC set out primarily to benefit itself," and thus "[t]he corporate benefit doctrine is inapt in these circumstances." (AB Ex. F at 10-11.) The trial court abused its discretion by awarding a mootness fee for a disclosure that was not "plainly material" and which was driven by a single stockholder's self-interest.

Respectfully, this Court should reverse the trial court's mootness fee award.

CONCLUSION

For all these reasons, the Court should (i) reverse the trial court's ruling that the Conversion Ratio included Legal Notes, Compensation Notes, and Alternative Warrants, and remand for further proceedings; and (ii) reverse the trial court's $75,000 mootness fee award to ARC.

DATED: December 15, 2025

DLA PIPER LLP (US)

/s/ John L. Reed

John L. Reed (I.D. No. 3023)
Ronald N. Brown, III (I.D. No. 4831)
DLA PIPER LLP (US)
1201 North Market Street, Suite 2100
Wilmington, DE 19801
(302) 468-5700
(302) 394-2341 (Fax)
john.reed@us.dlapiper.com
ronald.brown@us.dlapiper.com

Counsel for Appellee/ Defendant-Below/ Cross-Appellant
Digital World Acquisition Corp.