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Transaction ID 36970093
Case No. 6170-VCN

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE ANSWERS CORPORATION SHAREHOLDERS LITIGATION	:	CONSOLIDATED C.A. No. 6170-VCN

MEMORANDUM OPINION

Date Submitted: April 5, 2011
Date Decided: April 11, 2011

Jessica Zeldin, Esquire of Rosenthal, Monhait & Goddess, P.A., Wilmington, Delaware, and Arthur N. Abbey, Esquire, Stephen T. Rodd, Esquire, and Stephanie Amin-Giwner, Esquire of Abbey Spanier Rodd & Abrams, LLP, New York, New York, Attorneys for Plaintiffs.

Kevin R. Shannon, Esquire and Berton W. Ashman, Jr., Esquire of Potter Anderson & Corroon LLP, Wilmington, Delaware, and Jonathan M. Wagner, Esquire and Adina C. Levine, Esquire of Kramer Levin Naftalis & Frankel LLP, New York, New York, Attorneys for Defendants Answers Corporation, Robert S. Rosenschein, Mark A. Tebbe, Yehuda Sternlicht, Mark B. Segall, Lawrence S. Kramer, W. Allen Beasley, and R. Thomas Dyal.

William M. Lafferty, Esquire and D. McKinley Measley, Esquire of Morris, Nichols, Arsht & Tunnell LLP, Wilmington, Delaware, and David J. Berger, Esquire, Steven Guggenheim, Esquire, and Diane M. Walters, Esquire of Wilson, Sonsini Goodrich & Rosati, Professional Corporation, Palo Alto, California, Attorneys for Defendants AFCV Holdings, LLC, A-Team Acquisition Sub, Inc., and Summit Partners L.P.

NOBLE, Vice Chancellor

I. INTRODUCTION

Faced with uncertainty as to whether its past successes would continue in the face of possible competition from larger companies and the general unpredictability of its market sector, the defendant's board determined that a sale of the company was the best answer for its shareholders, among them an investment firm with a 30% stake in the company. The plaintiffs, who are also shareholders in the company, have moved for a preliminary injunction of the sale, arguing that the deal is the result of an unfair sales process and characterized by an unfair price, and that the defendants must make additional and corrective disclosures in the proxy materials relating to the sale. This memorandum opinion addresses the parties' contentions.

II. BACKGROUND

A. *The Parties*

Defendant Answers Corporation ("Answers" or the "Company"), a Delaware corporation, operates Answers.com, which provides answer-based search services in six languages to its users.[1] The Answers.com website is comprised of both the WikiAnswers and ReferenceAnswers platforms. Historically, the Company has been highly dependent on Google; in 2010, 75% of its revenue and

[1] Pls.' Opening Br. in Supp. of its Mot. for a Prelim. Inj. ("OB") at 6; Prelim. Inj. Hr'g Oral Arg. Tr. ("Tr.") at 7.

90% of its traffic came from Google,[2] although that dependence is expected to decrease in 2011.[3] Further, however, the traffic to Answers' sites, and therefore the Company's revenue, is dependant on the algorithms employed by the various search engines, especially Google, that direct users to Answers' content. These algorithms change unpredictably and for reasons outside of Answers' control, which, all agree, makes valuing the Company extremely difficult.[4]

The Individual Defendants are the members of Answers' board (the "Board"): Robert S. Rosenschein, Yehuda Sternlicht, Mark B. Segall, W. Allen Beasley, R. Thomas Dyal, Mark A. Tebbe, and Lawrence S. Kramer. The other Defendants are the "Buyout Group": the private equity firm Summit Partners L.P. ("Summit"); its portfolio company, AFCV Holdings, LLC ("AFCV"); and A-Team Acquisition Sub, Inc. ("A-Team"). Non-party Redpoint Ventures ("Redpoint")

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[2] Definitive Proxy Statement of Answers Corporation ("Proxy") at 32; Rosenschein Dep. 109, Mar. 16, 2011.

[3] Proxy at 32. The degree to which Answers' dependence on Google will decrease is subject of debate in this action.

[4] Rosenschein Dep. 108-09, 236 (describing the dependence on Google and its changing algorithms as a "Sword of Damocles over the business"). The Plaintiffs' expert, Mary O'Connor, expressed her opinion that it was "difficult, but not impossible" to generate financial projections for Answers, and she declined to place any particular value on the Company. O'Connor Dep. 94-95, 180, Mar. 29, 2011. Janine Shelffo of UBS agreed in explaining why UBS did not perform a discounted cash flow analysis of Answers: "[I]t's fairly unusual, particularly for a public company to have such challenging fundamentals in their business that they have an inability to forecast financial performance beyond the next fiscal year, but there were clearly some unique characteristics of this business, in particular its dependence on Google that made it an understandable issue from our perspective." Shelffo Dep. 102, Apr. 1, 2011.

owns 30% of Answers.[5] Redpoint appointed Beasley and Dyal to the Answers Board.[6]

B. *The Facts*

AFCV approached Answers on March 12, 2010, concerning the possibility of a business combination.[7] Rosenschein communicated AFCV's interest to the Board on March 17; months of exploratory discussions followed before Answers and AFCV entered a mutual confidentiality agreement in July.[8] Talks continued through August, when, following a disappointing report regarding Answers' second quarter 2010 earnings, the Company's stock price dropped from $7.99 to $4.58 in one week.[9] On September 7, David Karandish, of AFCV, sent a non-binding letter of intent to Answers indicating AFCV's interest in acquiring Answers for between $7.50 and $8.25 per share.[10] The Board decided to reject this offer but to continue negotiations, and it formally engaged UBS as its financial advisor on September 17.[11]

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[5] OB at 2; Answering Br. of Answers Defs. in Opp'n to Pls.' Mot. for a Prelim. Inj. ("AB") at 7.
[6] OB at 2; Proxy at 42.
[7] Proxy at 21.
[8] *Id.* at 21, 23.
[9] *Id.* at 24.
[10] *Id.* At that time, Answers' stock was trading in the vicinity of $6 per share. Aff. of Stephanie Amin-Giwner, Esq. ("Amin-Giwner Aff."), Ex. 3, Answers Corp. Form DEFA14A ("March 17 Additional Proxy Materials"), at 7.
[11] Proxy at 24. After extensive consideration by the Board and the Finance Committee, UBS was engaged as the Company's financial advisor. UBS will receive a $2.3 million fee in connection with its work on the proposed sale of Answers to AFCV; more than two-thirds of the fee is contingent on consummation of the sale. *Id.* at 40.

After Answers rejected its initial offer on October 5, AFCV increased its offer to $9.00 per share on October 19.[12] On October 28, Answers shared with AFCV diligence materials that included its projections and strategic plans for the remainder of fiscal year 2010 and fiscal year 2011.[13] After Answers received an unsolicited expression of interest from a private equity firm on November 1, AFCV increased its offer again, to $10.00 per share on November 4, and requested that Answers enter an exclusivity agreement.[14] On November 5, the Board's financing committee, comprised of Segall, Beasley, and Sternlicht, met to consider the offer.[15] It advised the Board to continue negotiations but to decline to enter the exclusivity agreement, advice that the Board followed.[16] AFCV subsequently raised its offer to $10.25 per share on the condition of exclusivity; on November 15, the two sides agreed to move forward at $10.25 without an exclusivity agreement, but on the condition that Answers would reimburse AFCV's expenses if Answers agreed to a sale to a different entity at a higher

[12] *Id.* at 24. Answers' stock price was then slightly over $6 per share. March 17 Additional Proxy Materials, at 7.
[13] Proxy at 25.
[14] *Id.*
[15] By this date, Answers' stock price had risen to almost $7 per share; on the day before the Proposed Transaction was announced on February 2, 2011, the stock price had risen to $8.78 per share. March 17 Additional Proxy Materials, at 7.
[16] Proxy at 25.

price.[17] Answers then reached out to ten entities that the Board and UBS identified as other potential buyers: three of these entered confidentiality agreements with Answers, but none made an offer.[18]

Answers and AFCV began exchanging drafts of a merger agreement on December 11. On December 23, the Board met with Answers' management, which presented the Board with updated forecasts for 2011.[19] Answers' cash position and its performance overall improved in the fourth quarter of 2010. In response, the Board discussed, at least to some degree, the possibility of remaining independent,[20] and it approached AFCV regarding the possibility of another price increase. On February 1, 2011, AFCV increased its offer to $10.50 per share. The Board met on February 2 and then received an opinion from UBS that $10.50 per share was a fair price for the Company.[21] The Board also discussed new, and more optimistic, forecasts for 2011.[22] The Proxy indicates that, after considering various factors, including the uncertainty of the 2011 forecasts, the investments required to remain a stand-alone company, the possibility of increased competition from

[17] *Id.* at 26. Also on this date, Rosenschein met with the private equity firm that had expressed interest in Answers earlier in the month; the firm then indicated that it was not interested in acquiring Answers. *Id.* at 25.
[18] *Id.* at 26. Despite the Plaintiffs' claim that this market check was completed in only two weeks, the record indicates that the process began in mid-November 2010 and continued through late-January 2011. Segall Dep. 108-09; Rosenschein Dep. 164-69.
[19] Proxy at 27.
[20] Shelffo Dep. 219.
[21] The offer price of $10.50 per share represents a 19.6% premium over the trading price of Answers' stock on February 1. March 17 Additional Proxy Materials, at 7.
[22] Proxy at 29.

companies such as Google and Facebook, the UBS fairness opinion, and the lack of interest from other companies, the Board decided that selling Answers to AFCV for $10.50 per share was in the best interest of Answers' shareholders. Signature pages were exchanged that day. Answers scheduled a shareholder vote on the merger (the "Proposed Transaction") for April 12, 2011,[23] and filed its Definitive Proxy Statement on February 7; it filed additional proxy materials on February 8 and 28 and on March 2, 9, 17, and 24.[24]

III. DISCUSSION

A. *Standard for a Preliminary Injunction*

In order to obtain the "extraordinary remedy" of a preliminary injunction, the Plaintiffs must show: first, a reasonable probability that they will be successful on the merits of their claims at trial; second, that they will suffer imminent, irreparable harm if an injunction is denied; and third, that the harm to the Plaintiffs,

[23] On April 9, 2011, a competing offer was submitted. The Board has deemed that offer "not credible," but it has reported that it will convene the stockholders' meeting on April 11, 2011, and then immediately continue it until April 14, 2011. The Board "determined that there is substantial doubt that [that] proposal could be financed or consummated, and that it would in any event entail substantial delays, posing risk for the [C]ompany and its stockholders." Letter of Kevin R. Shannon, Esq. to the Court, dated April 11, 2011. This Memorandum Opinion does not consider the consequences, if any, of the offer; it merely considers the issues that were framed in the context of the pending motion.

[24] Together, the Proxy and the additional materials are the "Proxy Materials."

if their application is denied, will outweigh the harm to the Defendants and the class if an injunction is granted.[25]

B. *Price and Process Claims*

Revlon[26] and its progeny instruct the Court to assess carefully the adequacy of the sales process employed by a board of directors.[27] For that reason, the Court must "(1) make a determination as to whether the information relied upon in the decision-making process was adequate and (2) examine the reasonableness of the directors' decision viewed from the point in time during which the directors acted."[28] When a board decides to sell a company, it is "charged with the obligation to secure the best value reasonably attainable for its shareholders, and to direct its fiduciary duties to that end."[29] In assessing directors' conduct, there is no single sale-process blueprint to follow,[30] and the question for the Court to answer "in a sales context is whether the directors made a reasonable decision, not a perfect decision."[31] Accordingly, "directors are generally free to select the path to

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[25] *David P. Simonetti Rollover IRA v. Margolis*, 2008 WL 5048692, at *5 (Del. Ch. June 27, 2008).
[26] *Revlon, Inc. v. MacAndrews & Forbes Hldgs., Inc.*, 506 A.2d 173 (Del. 1986).
[27] *See In re Del Monte Foods Co. S'holders Litig.*, 2011 WL 532014, at *15 (Del. Ch. Feb. 14, 2011) (emphasizing the subjective and objective components of the Court's enhanced scrutiny analysis).
[28] *In re Cogent, Inc. S'holder Litig.*, 7 A.3d 487, 497 (Del. Ch. 2010).
[29] *In re Dollar Thrifty S'holder Litig.*, 2010 WL 5648895, at *17 (Del. Ch. Sept. 8, 2010).
[30] *Simonetti*, 2008 WL 5048692, at *5.
[31] *Dollar Thrifty*, 2010 WL 5648895, at *17 (internal quotation omitted).

value maximization, so long as they choose a reasonable route to get there."[32] It is the Board's burden to prove it was sufficiently informed and acted reasonably.[33]

The Plaintiffs contend that the record establishes a reasonable probability of success on their price and process claims because the Board failed to maximize shareholder value when it agreed to the Proposed Transaction by: (1) allowing conflicted directors to lead the negotiations; (2) conducting only a limited market check and failing to properly consider strategic alternatives; (3) agreeing to preclusive deal protection measures; and (4) relying upon the flawed fairness opinion in assessing the Proposed Transaction and the Company's options. In addressing the Plaintiffs' contentions, the Court turns to the rapidly assembled record before it to consider whether the Board adopted a reasonable approach under the circumstances.

1. The alleged interests of Beasley, Dyal, and Rosenschein

The Plaintiffs suggest that the self-interests of Beasley and Dyal (Redpoint's representatives on the Board) and Rosenschein tainted the negotiating process. Beasley and Dyal, they contend, were motivated by Redpoint's desire to exit its investment in the Company and, to support its exit strategy, had informed

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[32] *Id.*
[33] *Cogent*, 7 A.3d at 497.

Rosenschein to complete a sale or risk being replaced as CEO.[34] The record indicates, however, that Beasley and Dyal did not direct the negotiations with AFCV.[35] Rather, the Board was actively engaged in the sales process, and Rosenschein and the Company's financial advisor primarily led the negotiations.[36] Moreover, although there is some indication that Redpoint's representatives on the Board had contemplated replacing Rosenschein (and others on the management team),[37] it is not apparent, as the Plaintiffs suggest, that "Rosenschein (and other Board members) knew [his] job was on the line unless he could do a deal with an acquirer that would retain him."[38] While Rosenschein may have queried AFCV of his—and management's—employment status in the surviving entity, his future role

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[34] In support of these contentions, the Plaintiffs primarily look to Exhibits 4 and 5 of the Amin-Giwner Affidavit.

[35] Redpoint initially received an unsolicited expression of interest from AFCV about a potential business combination between that entity and the Company. *See* Amin-Giwner Aff., Ex. 14, Mar. 12, 2010 Email from Robert S. Abbe to Redpoint; *see also* Segall Dep. 14, 17-18, Mar. 22, 2011.

[36] Segall Dep. 16. The Board held ten meetings—with the Finance Committee, headed by Segall, meeting separately on occasion—to discuss the Proposed Transaction beginning in March 2010. Rosenschein kept the Board informed as to developments in the negotiation process, and ultimately, the Board unanimously approved the Proposed Transaction after lengthy negotiations with AFCV.

Nonetheless, the Court is cognizant that not all of the increases in AFCV's offer price can be attributed to the Board's negotiating style; the rise in Answers' stock price during the fourth quarter of 2010 required AFCV's offer to keep pace. *See* March 17 Additional Proxy Materials, at 7.

[37] Amin-Giwner Aff., Ex. 5, Nov. 3, 2010 Email from Beasley to Dyal; *see also* Beasley Dep. 12, 21, Mar. 24, 2011.

[38] OB at 25. Although the record suggests that Rosenschein may have known that he could be replaced as chief executive officer, it also suggests that he understood that he would remain as chairman of the board (Amin-Giwner Aff., Ex. 5) and there is no suggestion that he was told that his job depended on completing a business combination. *Id.* at Exs. 4, 5; Shelffo Dep. 182-83.

(if any) will not be evaluated until after the merger.[39] More importantly, the Plaintiffs have not challenged the independence or disinterestedness of four directors on the seven member board; that is, the process and the Proposed Transaction have been approved by a disinterested and independent board. Accordingly, the Plaintiffs fail to demonstrate a reasonable probability of success in showing "self-interest, undue favoritism or disdain towards a particular bidder, or a similar non-stockholder-motivated influence that calls into question the integrity of the process."[40] Additionally, the record does not demonstrate that the Board acted unreasonably in permitting Rosenschein and UBS to lead negotiations with AFCV.

2. <u>The market check and strategic alternatives to selling the Company</u>

The Plaintiffs also challenge the Company's market check as insufficient and limited as a result of the acquiror's demands and against the advice of its financial advisor. The Court cannot conclude that the Board favored AFCV over other potential bidders—it rejected multiple offers from AFCV and its repeated

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[39] Karandish Dep. 111-12, Mar. 22, 2011; Rosenschein Dep. 218-20.

[40] *Del Monte Foods*, 2011 WL 532014, at *15. Further, although Redpoint may have wanted to sell its interest in the Company, Redpoint is not a controlling shareholder and, with the majority of the Board, independent and disinterested, Redpoint's wishes did not taint the process here. Moreover, it is not clear whether Redpoint's desire to divest its holdings in the Company was a product of its own needs and self-interest or was the result of its assessment that the Company's better times were behind it.

demands for exclusivity.[41] More importantly, the Board, with assistance from UBS and management, "develop[ed] a list of priority potential buyers to reach out to . . . that were most likely to be able to pay a comparable or higher price" than AFCV.[42] Ten potential acquirors were eventually contacted with only three responding that they were interested in exploring a transaction; in-person or phone presentations were subsequently made by management to those three entities.[43] The Board made a reasonable judgment to solicit the market discretely "so as not to disrupt the business or hurt [it] if no transaction took place."[44] Ultimately, no other bidders emerged despite the Company's efforts to pursue alternative transactions with other suitors. Although the Board could have conducted a more robust market check, its efforts here, reaching those companies viewed as most likely to be interested in a transaction, were adequate.

It is not easy to determine the extent to which the Board considered maintaining Answers as an independent business before deciding to sell it. It is apparent, however, that the Board deliberated at some level on whether or not to pursue a business combination, even if only minimally and documented less than

[41] Rosenschein Dep. 118-19, 130-31; Segall Dep. 83-87; *see also* Aff. of Jonathan M. Wagner, Esq. ("Wagner Aff."), Ex. I, Minutes of Dec. 8, 2010 Board Meeting, at 2.
[42] Shelffo Dep. 115; *see also* Segall Dep. 107-08. These discussions of potential buyers began as early as May 2010. Shelffo Dep. 116.
[43] Shelffo Dep. 119-20; *see also* Amin-Giwner Aff., Ex. 29, Minutes of Dec. 23, 2010 Board Meeting, at 3-4.
[44] Segall Dep. 108; *see also* Rosenschein Dep. 99-100; Shelffo Dep. 123-24.

ideally.[45] The minimal record before the Court does not demonstrate that the Board acted unreasonably. To the contrary, the Proxy explains nine distinct reasons[46] why the Board decided that selling the Company was a better option for shareholders than continuing as a stand-alone enterprise. This all tends to support the conclusion that the Board, with a majority of independent and disinterested directors, acted reasonably in deciding to sell and throughout the sales process.

3. The deal protection measures

The deal protection measures complained of by the Plaintiffs[47] "are standard merger terms, are not *per se* unreasonable, and do not alone constitute breaches of fiduciary duty."[48] Moreover, the Plaintiffs argument that the voting agreements—locking up approximately 27% of the vote in favor of the Proposed Transaction—

[45] *See* Rosenschein Dep. 43-45, 47, 212; Segall Dep. 21, 25-26, 61-62, 164-65; Shelffo Dep. 218-19. In particular, the Board's minutes do not include sufficient detail to ascertain with any accuracy when the concept of remaining independent was expressly discussed. *See* Amin-Giwner Aff., Exs. 8, Minutes of Aug. 13, 2010 Board Meeting; 15, Minutes of March 17, 2010 Board Meeting; 16, Minutes of Apr. 26, 2010 Board Meeting; 17, Minutes of June 17, 2010 Board Meeting; 21, Minutes of Sept. 17, 2010 Board Meeting; & 29, Minutes of Dec. 23, 2010 Board Meeting; Wagner Aff., Exs. G, Minutes of May 20, 2010 Board Meeting; H, Minutes of Nov. 15, 2010 Board Meeting; & I, Minutes of Dec. 8, 2010 Board Meeting.
[46] Proxy at 32-33.
[47] These measures include: a termination fee plus expense reimbursement of 4.4% of the Proposed Transaction's equity value, a no solicitation clause, a "no-talk" provision limiting the Board's ability to discuss an alternative transaction with an unsolicited bidder, a matching rights provision, and a force-the-vote requirement. The Plaintiffs also point to separate voting agreements requiring Redpoint and Rosenschein to vote their shares (collectively, approximately 27% of the vote) in favor of the Proposed Transaction and against any alternative business combination involving the Company. The cumulative impact of these measures, argue the Plaintiffs, is an unreasonable approach that precludes a higher bid from emerging.
[48] *In re 3Com S'holders Litig.*, 2009 WL 5173804, at *7 (Del. Ch. Dec. 18, 2009).

"practically insure that no other bid will receive a majority vote"[49] is unconvincing; first, "voting agreements, of course, are perfectly legal"[50] and, second, collectively viewing the voting agreements with the other deal protection measures, they do not make the Proposed Transaction 'a *fait accompli*' and do not appear impermissibly coercive.[51] The measure of a deal protection strategy, of course, is the cumulative effect. Beyond merely counting the different provisions and explaining why drafters employ such terms, the Plaintiffs have not offered any reason for the Court to conclude that the deal protection devices, on a cumulative basis, are somehow preclusive.[52]

4. <u>The Board's reliance on UBS's fairness opinion</u>

The Plaintiffs contend that UBS's fairness opinion contains multiple flaws; for example, they argue that it is not based on a discounted cash flow analysis of Answers' value as a going concern and that the comparable company analysis undertaken by UBS failed to use companies that were actually comparable to Answers. They contend that, as a result of these flaws, the Board cannot rely on

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[49] OB at 31.
[50] *Orman v. Cullman*, 2004 WL 2348395, at *7 n.91 (Del. Ch. Oct. 20, 2004).
[51] *See id.*
[52] The break-up fee, at 4.4% of equity value, is near the upper end of a "conventionally accepted" range. This is a relatively "small" transaction; a somewhat higher than midpoint on the "range" is not atypical. The Plaintiffs argue that the meaningful percentage is one calculated in reference to Answers' enterprise value and not to its equity value. That argument is plausible. *See, e.g.*, *Cogent*, 7 A.3d at 503. This, however, is not a matter of first impression. Our law has evolved by relating the break-up fee to equity value. The Plaintiffs have offered no compelling reason for deviating from that approach.

the UBS opinion to argue that it was informed and that these flaws suggest that the price offered is inadequate relative to Answers' value as a stand-alone company.[53]

The Board's reliance on that opinion, however, appears reasonable. UBS's independence and qualifications are not seriously challenged here, and it made seemingly sensible judgments in the methodologies it utilized in view of the limited data the Board was able to provide given its inability to generate reliable

[53] The Plaintiffs also contend that UBS's valuation of the Company is flawed because it does not account for the amount of free cash Answers had when it executed the Proposed Transaction, which AFCV will receive in the deal and use to finance the transaction in part. They argue that, because of this cash, the premium represented in the offer price is illusory; that is, when the value of the cash is backed out of the transaction, the allegedly "real" offer price is approximately equal to Answers' February 1, 2011, trading price.

Answers' financial structure is somewhat unusual for a young Internet company. Roughly one-fifth of its value is cash. That results in a sizeable difference between its equity value and its enterprise value. The Plaintiffs seek to make much of this condition. They argue that, when assessed as a matter of enterprise value, there is no significant premium in the Proposed Transaction. That criticism, however, depends upon a comparison of the outcomes of two different valuation measures. They rightly emphasize the significance of Answers' cash holdings, but that does not impugn the fundamental valuation analysis and comparison necessary to determine the premium.

The task of evaluating Answers was challenging. Without projections of financial performance, UBS was unable to perform a discounted cash flow analysis. It chose to use a comparable company methodology, even though no other company was all that comparable. UBS recognized that; it attempted to make reasonable adjustments for it. Sometimes appraisal tools do not inspire confidence; this is one of those instances—notably, Segall expressed his reservations that an offer around \$10.25 or \$10.50 may be leaving additional consideration on the table. *See* Amin-Giwner Aff., Ex. 6, Nov. 8, 2010 Email from Segall to Shelffo and Beasley. UBS's strategy, given the discretion accorded to the work of experts, was within the range of reasonableness. Moreover, it does bear mentioning that UBS used its chosen methodology to value Answers without the cash and then adjusted the cash back into its final numbers. *See* Amin-Giwner Aff., Ex. 10, Feb. 2, 2011 UBS presentation to the Board, at ANSW0000591; Shelffo Dep. 55-57, 131-36.

Finally, the Plaintiffs raise a concern that, because Answers is thinly traded, any premium on the market price of the stock should be regarded skeptically. The Court is satisfied that, even after considering the liquidity discount associated with thinly-traded stock and the control premium to which public shareholders may be entitled when effective control of the enterprise changes hands, the offer price still represents a premium for Answers' shareholders.

long-term financial projections.[54] Although Shelffo testified that is was "unusual, particularly for a public company to have such challenging fundamentals in their business that they have an inability to forecast financial performance beyond the next fiscal year," she further explained that "there were clearly some unique characteristics of this business, in particular its dependence on Google that made it an understandable issue from our perspective."[55] The inability to make long-term financial projections apparently prevented UBS from generating a reliable discounted cash flow analysis of Answers' value.[56] Moreover, she testified that "Answers doesn't have any pure comparables because their business is somewhat unique."[57] Instead, UBS used "a group of publicly traded companies which [it] believe[s] are most comparable to Answers.com . . . ."[58] The Plaintiffs' expert even recognized that reasonable minds could differ as to the methodologies and comparables,[59] and that it is difficult, but not impossible, to prepare forecasts for the Company.[60] Thus, the Board acted reasonably in relying on UBS's analysis, which was sensibly crafted given the limited universe of information available and the unique characteristics of the Company.

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[54] *See* Shelffo Dep. 94, 102, 107-08 (discussing the methodologies employed by UBS in the context of the unique characteristics of the Company's business, including the volatility in financial performance and the inability to make certain predictions).
[55] *Id.* at 102.
[56] *Id.* at 101.
[57] *Id.* at 144.
[58] *Id.* at 145.
[59] O'Connor Dep. 113.
[60] *Id.* at 180.

Having considered the various arguments raised by the Plaintiffs, they have failed to demonstrate a reasonable probability of success on the merits of their price and process claim.

C. *Disclosure Claims*

When soliciting stockholder action, the directors of a Delaware corporation are bound by their fiduciary duties of care and loyalty to "disclose fully and fairly all material information within the board's control . . . . The burden of establishing materiality rests with the plaintiff, who must demonstrate 'a substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available.'"[61] Non-material facts need not be disclosed, and additional details underlying financial projections are not necessarily material, especially where they "would tend to confuse stockholders or inundate them with an overload of information."[62]

By their reply brief, the Plaintiffs seem to limit their claim to six demanded disclosures. The first four disclosures are graphs that were provided by UBS to the Board and AFCV; "[t]he fifth would add two numbers—2011 estimated page

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[61] *Gantler v. Stephens*, 965 A.2d 695, 710 (Del. 2009) (quoting *Arnold v. Soc'y for Sav. Bancorp, Inc.*, 650 A.2d 1270, 1277 (Del. 1994)).

[62] *Wayne County Employees' Ret. Sys. v. Corti*, 954 A.2d 319, 330 (Del. Ch. 2008) (internal quotation omitted); *see also, e.g.*, *Zirn v. VLI Corp.*, 1995 WL 362616, at *4 (Del. Ch. June 12, 1995) ("[T]he law ought [to] guard against the fallacy that increasingly detailed disclosure is always material and beneficial disclosure. In some instances the opposite will be true.").

views and average annual RPM—to the Summary Financials chart included in the Proxy Amendment filed on March 17, 2011"; the sixth would require changes and additions to the way the Proxy Statement reports Answers' expectations that the Company's dependence on Google will decrease and that its revenue per thousand page views ("RPM") will continue to decline, on a whole year basis, in 2011. The Court addresses each of these six demanded disclosures, and then, for completeness, considers certain claims that were suggested in the Opening Brief and at oral argument.

The first graph that the Plaintiffs argue should be disclosed is titled "Historical and Projected RPMs."[63] The Plaintiffs contend that the graph is material because they interpret it as showing, contrary to the Proxy's statement that average RPM has declined since 2009,[64] an increase in RPM for 2011.

RPM "is an operating measure of how much revenue Answers earns per 1,000 page views,"[65] and the graph shows the RPMs derived from Google and other sources, as well as Answers' total worldwide RPM. According to the graph, Answers' worldwide RPM was projected to drop sharply in January 2011 and then rise slowly through the end of the year such that December 2011 worldwide RPM is projected to be approximately 5% higher than that measured in December 2010.

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[63] Amin-Giwner Aff., Ex. 36 at ANSW0001409 (the "H-P RPM Graph").
[64] Proxy at 32.
[65] AB at 43.

Taking into account the monthly RPMs and not simply the year-end values, however, shows that, on a whole year basis, 2011 worldwide RPM is projected to fall to 4.86 from 4.96 in 2010.[66]

Although the increases in RPM that were projected to occur after January 2011 might be interesting to shareholders, the H-P RPM Graph itself is not material to shareholders' decision whether to vote in favor of the Proposed Transaction. The Proxy shows that Answers' 2011 revenue is projected to be 24% higher than it was in 2010.[67] RPM measures an aspect of Answers' revenue, and, even under the interpretation advanced by the Plaintiffs, the H-P RPM Graph shows only a projected 5% increase in RPM when comparing the December 2011 value to December 2010. That is, the scenario the graph supports with regard to a component of revenue is less rosy than the information the Proxy now includes regarding revenue itself. When values projected for the rest of the months in 2011 are taken into account, the graph might inaccurately suggest to shareholders that Answers' 2011 revenue was projected to be lower than 2010 revenue. Because the H-P RPM Graph represents a level of detail that might tend to confuse shareholders without contributing materially to their decision with regard to the merger, the Court will not order its disclosure.[68]

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[66] H-P RPM Graph; O'Connor Dep. 68.
[67] March 17 Additional Proxy Materials, at 3.
[68] *See Arnold*, 650 A.2d at 1280; *Zirn*, 1995 WL 362616, at *4.

Plaintiffs' related disclosure claim, that the projected total page views and average RPMs for 2011, which are both, at most, components of the already-disclosed 2011 projected revenue, be disclosed in the "Summary Financials" chart[69] that appears in the March 17 Additional Proxy Materials, is denied for the same reasons.

The Plaintiffs next contend that three charts, titled "Annual P&L, Margins (2006-2011E),"[70] "Quarterly P&L (2005-2011E),"[71] and "Answers Corp. Cash Flow,"[72] respectively, must be disclosed. As with the H-P RPM Graph, described above, these documents provide additional details relating to figures that already appear in the Proxy Materials. Answers has already disclosed summary information regarding the Company's revenue, EBITDA, and adjusted EBITDA for 2008 through 2011, as well as an explicit statement of the amount of cash Answers is expected to have on hand as of the effective date of the Proposed Transaction, and a statement that it expects AFCV to use this cash for payment of the merger consideration.[73] The annual and quarterly P&L charts contain data regarding revenue and adjusted EBITDA reaching back to 2006 and 2005 respectively, and also contain information about Answers' expenses during the

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[69] March 17 Additional Proxy Materials, at 3.
[70] Amin-Giwner Aff., Ex. 38 at REDPOINT000468.
[71] *Id.* at REDPOINT000469.
[72] *Id.* at REDPOINT000470.
[73] Proxy at 40, 70; March 17 Additional Proxy Materials, at 3-4.

time periods they cover.[74] The cash flow chart includes data underlying the projections regarding the free cash projected to be available to Answers during 2011, which varies between roughly $25.5 million and $28.3 million throughout the year. Although all of this granular information might be of interest to Answers' shareholders, the information regarding revenue, EBITDA, and cash-on-hand already provided in the Proxy Materials is sufficient to allow shareholders to evaluate the Proposed Transaction in light of these factors. That is, the three charts would not be material to the shareholders' vote, and they need not be disclosed.

The Plaintiffs also contend that the way the Proxy describes the expected decline in Answers' dependence on Google is misleading and must be corrected. The Proxy discloses, as one factor that contributed to the Board's decision to recommend that shareholders approve the Proposed Transaction:

> the fact that Answers.com earned approximately 75% of its revenues from Google Adsense, during the first three quarters of 2010, that it is expected to continue to be a significant source of revenue for Answers.com in the future although less than the aforesaid 75%, and that Answers.com has no control over the programs and algorithms used by Google to place ads on Answers.com's website, and that changes to these programs and algorithms in the past have had, and at any time in the future may have, a material adverse effect on the revenue that Answers.com earns through Google Adsense . . . .[75]

Examining the H-P RPM Graph, however, the Plaintiffs observe that, for December 2011, Google Adsense is projected to account for approximately 53% of

[74] Annual P&L, Margins (2006-2011E); Quarterly P&L (2005-2011E).
[75] Proxy at 32.

Answers' worldwide RPM. They argue that, even though this figure is literally "less than . . . 75%," the projected drop to 53% is so significant that without providing more specificity, the Proxy is materially misleading.

Although the question is close, the disclosure set forth above adequately describes this aspect of the relationship between Answers and Google. Google Adsense is projected to be 53% of Answers' RPM at only one point on the graph: for every month in 2011 before December, Google represented a higher proportion of Answers' projected worldwide RPM, although always less than the 75% of worldwide RPM it represented during the first three quarters of 2010.[76] Review of the area under the curves on the H-P RPM Graph for the period covered by the projections reveals that, for all of 2011, Google Adsense is projected to account for a higher percentage of Answers' 2011 worldwide RPM than would be represented by reporting only the ratio implied by December 2011's projected RPMs alone.

Further, on the page following the disclosure that the percentage of Answers' revenue deriving from Google Adsense is projected to decline in 2011 compared to the first three quarters of 2010, the Proxy discloses that "the Company's forecast showing improved performance for 2011 is subject to

[76] For example, the graph indicates that for March 2011, Google Adsense was projected to account for approximately 62% of Answers' worldwide RPM (2.84 of 4.58), and for approximately 55% in September 2011 (2.80 of 5.05). H-P RPM Graph.

significant risks and uncertainties and . . . the Company might not be able to achieve the projected performance."[77]

Because of the stated unreliability of Answers' 2011 projections, the specific percentage of Answers' revenue that is projected to come from Google in 2011 is not as important to the shareholders' decision as the facts that (1) Google will remain a significant source of Answers' income and (2) a change in Google's algorithms could alter Answers' prospects at any time. The Court is satisfied that the existing disclosures adequately apprise shareholders of the risks arising out of Answers' dependency on Google Adsense while also informing them that such dependency is now less than it was during the first three quarters of 2010.

Finally, the Plaintiffs advance certain disclosure claims that are related to their substantive price and process claims. The most significant of these disclosure claims is that "[t]he Proxy fails to disclose that the Company did not consider and evaluate all reasonable alternatives to the Proposed Transaction."[78] The Court has already determined that the Board conducted an adequate market check that revealed no other interested buyers; therefore, any claim that the Board failed to consider alternative buyers is moot. The Plaintiffs also contend, however, that, despite the Proxy's statement that the Board considered whether the Proposed Transaction "represents a more attractive opportunity for Answers.com's

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[77] Proxy at 33.
[78] OB at 42.

stockholders than the value of Answers.com common stock likely to be realized . . . in the event that Answers.com remained independent,"[79] the Board never seriously considered maintaining Answers as an independent company, and that the Proxy must be corrected in this regard.

Although the Court acknowledges the minutes of the Board's meetings are not particularly helpful in corroborating that the Board examined that option, it is satisfied that the record before it does indicate that the Board did consider the possibility of Answers remaining independent. For example, Shelffo testified that, in the face of Answers' strong performance, compared to projections, during the fourth quarter of 2010, the Redpoint directors "played devil's advocate a fair bit and suggested that maybe given the outperformance [the Board] should pursue the status quo alternative."[80] Given the existence of credible testimony that the option of remaining independent was discussed by the Board at some point, the Proxy's disclosures on this issue are not materially misleading.

The Plaintiffs also argue that the Proxy fails to disclose that Beasley, Dyal, and Rosenschein are conflicted with regard to the Proposed Transaction, but the Proxy does disclose that Beasley and Dyal are affiliated with, and appointed to the Board by, Redpoint.[81] The Plaintiffs also argue that the Board's August 13, 2010

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[79] Proxy at 32.
[80] Shelffo Dep. 219.
[81] Proxy at 42, 44.

decision to designate Dyal and Beasley as independent directors under NASDAQ's rules must be disclosed. The technical status of these directors as "independent" under NASDAQ rules is simply not relevant to shareholders' decision regarding the Proposed Transaction where the Proxy explains their interests in this particular transaction. No further disclosures regarding the interests of Beasley and Dyal are required.

Similarly, because the Court has determined that the record does not indicate that Rosenschein has a material interest in the consummation of the Proposed Transaction, no additional disclosures are required with regard to his status.

In sum, the disclosures in the Proxy Materials enable Answers' shareholders to make an informed decision regarding the Proposed Transaction. The Plaintiffs have not demonstrated a likelihood of success regarding their claim that additional or corrective disclosures are required.[82]

D. *Irreparable Harm*

The Plaintiffs advance two main arguments that an injunction is necessary to prevent Answers' shareholders from suffering irreparable harm. First, citing *In re*

[82] Reasons supporting the Board's approach to a sale of the Company are found in the record and reported—perhaps somewhat cryptically—in the Proxy Statement. If all agreed that the Company should be sold, the intensity of the debate would have been greatly reduced. The fundamental dispute is whether the Company should be sold or, perhaps more specifically, whether the Board examined with sufficient effort the prospects of a stand-alone enterprise. One supposes that more analysis is always possible, but, at some point, a board is called upon to make a decision. Nothing in the Board's process or its disclosures to the shareholders suggests a reasonable probability that it failed to satisfy its fiduciary duties.

Pure Resources, Inc. Shareholders Litigation,[83] they contend that forcing shareholders to vote on the Proposed Transaction on the basis of misleading or inadequate information in the Proxy Materials would cause irreparable harm. Second, they argue that allowing a vote to proceed would foreclose the opportunity to solicit a topping bid, thereby causing irreparable harm.[84]

Because the Plaintiffs have not demonstrated a likelihood of success with regard to either their price and process claims or their disclosure claims, they have also not demonstrated a likelihood that Answers' shareholders will suffer irreparable harm if the Plaintiffs' motion for a preliminary injunction is denied.[85]

E. *The Balance of the Equities*

The balance of the equities favors letting the shareholders decide the Company's fate. The Company is buffeted by unpredictable market forces over which it has little, if any, control. As the Individual Defendants' counsel has argued, the price of the stock, in the absence of this transaction, might go to $20 per share, but it might also go to $2 per share.[86] Now might be the right time to exit; greater success might be just around the proverbial corner. It is, of course, obvious that no one knows. There simply is nothing unreasonable about the

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[83] 808 A.2d 421, 452 (Del. Ch. 2002).
[84] *See Del Monte Foods*, 2011 WL 532014, at *21.
[85] Likelihood of success on the merits of their disclosure claim would likely have satisfied the irreparable harm standard. Whether limited probability of success on the price and process claims would have been accompanied by the same conclusion is not so clear, but, under the circumstances, the question does not need to be resolved.
[86] Tr. at 67.

concerns expressed by the Board's members regarding the Company's future as a stand-alone entity. In light of the dynamic forces affecting the business, the Board reached a conclusion; some will disagree and the disagreement may be reasonable. The risks and opportunities have been fairly—even if not perfectly—explained to the shareholders. That total mix of information allows them to decide whether to opt for risk and upside potential or to opt for certainty.

Where the Plaintiffs have not established a reasonable likelihood that they would succeed on their claims, the risk to shareholders that delaying the Proposed Transaction might cause, without any reasonable expectation that any superior offer would be forthcoming (or that remaining a stand-alone would likely produce greater value) clearly outweighs any benefits that might result from granting an injunction. Ultimately, this is a matter for stockholder democracy and, thus, the Court should stand down and let the shareholders decide.[87]

For these reasons, the equities counsel in favor of allowing the vote to proceed.

IV. CONCLUSION

As set forth above, the Plaintiffs have not demonstrated a reasonable probability of success on the merits of their claims, have not shown that the proposed class will suffer irreparable harm in the absence of interim injunctive

[87] The adequately informed Answers' stockholders may also exercise their appraisal rights. *See, e.g.*, *La. Mun. Police Employees' Ret. Sys. v. Crawford*, 918 A.2d 1172, 1192 (Del. Ch. 2007).

relief, and have not shown that a balance of the equities supports judicial interference with the stockholder franchise.

Accordingly, the Plaintiffs' motion for a preliminary injunction is denied. An implementing order will be entered.