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BY E-FILE AND HAND DELIVERY

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The Honorable Sam Glasscock, III
Court of Chancery
34 The Circle
Georgetown, Delaware 19947

RE: *Preston Hollow Capital, LLC v. Nuveen, LLC, et al.*,
C.A. No. 2019-0169-SG (Del. Ch.)

Dear Vice Chancellor Glasscock:

I write on behalf of Defendants (together, "Nuveen") in response to the letter submitted late on Friday by Preston Hollow Capital, LLC ("PHC" or "Plaintiff"). PHC has not moved for leave to amend and, accordingly, Nuveen respectfully requests that the Court rule on Nuveen's now fully-briefed and argued motion to dismiss.

To the extent any claims remain following the Court's ruling, PHC must establish "good cause" to amend under Rule 15(aaa), as any dismissal is with prejudice. The recordings may be considered, if at all, on a fully-briefed motion for leave to amend, where the Court and Nuveen have the benefit of Plaintiff's actual

proposed second amended Complaint (rather than speculate about the third iteration of the Complaint).

In any event, the recordings merely confirm why PHC's amended complaint still fails to state a claim. Plaintiff cherry-picks soundbites to argue that the recordings support leave to amend or even denial of the motion to dismiss, but read objectively, they show that Plaintiff's allegations still suffer (and would suffer) from the same infirmities that justify dismissal of the current Complaint. *See Clark v. State Farm Mut. Auto. Ins. Co.*, 131 A.3d 806 (Del. 2016) (holding leave to amend should be denied when futile). The recordings contain no additional facts that alter Plaintiff's theory of liability, and the "quite restrictive standard" of Rule 15(aaa) is not met. *Lillis v. AT&T Corp.*, 896 A.2d 871, 878 (Del. Ch. 2005).

First, Plaintiff's argument regarding its Donnelly Act claim reflects Plaintiff's continued misunderstanding of a horizontal group boycott theory. Notably absent from Plaintiff's letter, and the recordings, is *any* suggestion that there was an agreement among the broker-dealers.[1] Plaintiff refers to "commitments" between the broker-dealers and Nuveen and claims that "these were not one off vertical

[1] The recordings actually show that [redacted] was not even in a horizontal *relationship* with the other broker-dealers because it did not provide underwriting services for municipal bond issuances—as [redacted] repeatedly clarified. *See, e.g.*, Ex. A 15:14-18 ("[redacted]"); Ex. B 13:21-14:10 ([redacted]); *id.* 20:4-18; *id.* 8:20-9:18.

agreements." Dkt. 108 at 3. But even if there were multiple vertical agreements, that does not fulfill the *horizontal* requirement for a horizontal group boycott.[2] A "hub-and-spoke" conspiracy fails without the requisite "rim"—*i.e.*, an agreement *among* the horizontal competitors. *See* Dkt. 79 at 19-24. Because the tapes reveal no such agreement, they cannot cure the shortcomings of Plaintiff's Donnelly Act claim.[3]

Plaintiff claims Nuveen's privilege to compete argument now fails because the recordings show that Nuveen wanted to "stamp out PHC's business model" or choke off PHC's liquidity. Dkt. 108 at 2, 4. As an initial matter, the tapes show that this controversy was spawned not by Nuveen, but by PHC's effort to deprive Nuveen

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[2] Moreover, the recordings do not demonstrate the existence of vertical agreements—Nuveen repeatedly told [redacted] that [redacted] *See, e.g.*, Ex. C 11:12-19; *id.* 11:23-24 ([redacted]"); *id.* 6:7-8 ("[redacted]"); Ex. A 15:8-11 ("[redacted]"); Ex. B 24:20-25:4 "[redacted]").

[3] As for preemption, Plaintiff claims that the recordings' reference to "[redacted]" Dkt. 108 at 3 n.3. However, the [redacted] Ex. D 2:21-22; 14:4-12. Thus, the recordings underscore the interstate impact of the allegations and support dismissal on the basis of preemption.

of deal opportunities. Ex. B 19:2-4 (“[redacted]”). *See Kable Prod. Servs., Inc. v. TNG GP*, 2017 WL 2558270, at *7 (Del. Super. Ct. June 13, 2017) (holding self-protection by competitor permitted). The transcripts show Nuveen acted to protect itself. *See* Ex. A 12:9-14 (“[redacted]”); Ex. B 31:13-14 (“[redacted]”). The recordings also reveal that Nuveen acted for other legitimate interests, like protecting against PHC’s derogatory statements about Nuveen to issuers, including that [redacted] (*see id.* 31:15-24), and minimizing the counterparty risk Nuveen faces when broker-dealers work with PHC. *See* Ex. C 18:4-12.

Plaintiff also asserts that the recordings show Nuveen defamed it. Dkt. 108 at 5. But these comments are still the type of generalized assertions that cannot ground an actionable defamation claim. *See Agar v. Judy*, 151 A.3d 456, 482 (Del. Ch. 2017). Plaintiff’s other allegations of defamation, including that Nuveen accused PHC of doing “[redacted] or referenced [redacted]” are

likewise too vague and connotative to be verified factual statements. And the assertion that Nuveen accused Plaintiff of [redacted] ignores that the alleged [redacted] are [redacted] *See supra* at 4.

The recordings thus should not alter the Court's intent to rule on Nuveen's pending motion to dismiss, or the ruling itself. Should any claims remain, PHC may seek leave to amend, which Nuveen reserves all rights to oppose.

Respectfully,

/s/ Peter J. Walsh, Jr.

Peter J. Walsh, Jr. (No. 2437)
Words: 993

PJW
Enclosure
cc: R. Judson Scaggs, Esq. (*via e-file*)
Barnaby Grzaslewicz, Esq. (*via e-file*)
Elizabeth Mullin, Esq. (*via e-file*)