

Inviting Comments for Response to Dispute Between Dell Appraisal Petitioners

A motion was filed in the Dell appraisal case yesterday afternoon on behalf of petitioners managed by Magnetar Capital, seeking the court's establishment of a "co-lead" status for Magnetar as well as for its legal counsel to "ensure that Magnetar's directions are implemented" in the continuing proceedings.¹ Your comments are invited, either for attribution or anonymous reporting, to guide a response by counsel for Cavan as the initiating petitioner in the case addressing the interests of all claimants.

Summarizing Magnetar's position, they cite concerns about control of the proceedings by the currently appointed Lead Counsel representing petitioners managed by T. Rowe Price,² partly because of the conflicts of interest created by their challenged eligibility based on the recently disclosed votes in favor of the Dell buyout,³ but also because Magnetar has not been able to participate in the management of the case.⁴

Preliminarily, it has been suggested that counsel for Cavan⁵ request the Court's consideration of the following issues that may be relevant to the interests of all unchallenged Dell claimants:

- A. *Interests of petitioners with challenged claims may differ from those of other claimants.* If there is a significant risk that a petitioner's claim may be ineligible for appraisal rights, and thus entitled only to the offer price without interest accrual, that petitioner's interests may be best served by a rapid resolution of the case without regard to valuation. This interest has become very significant since Dell and T. Rowe Price have established a briefing schedule that does not require the petitioners to file their answering

¹ See [August 19, 2015, In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): The Magnetar Funds' Cross-Motion for Appointment as Co-Lead Petitioners and for Appointment of Their Choice of Co-Lead Counsel](#).

² See [April 10, 2014, In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Consolidation Order](#).

³ In paragraph 3 of their [motion](#), Magnetar's counsel states "As a threshold matter, T. Rowe Price failed to disclose to the Magnetar Funds that it had first come to discover on or about October 2014 (and possibly earlier, in October 2013) that its shares had been voted in favor of the merger...." For the previously reported issues of the eligibility challenge, see [May 18, 2015 USA Today: "Dell moves to boot T. Rowe from appraisal case"](#) and the subsequent [July 30, 2015 \(public version of brief filed August 6, 2015\), In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Respondent Motion for Partial Summary Judgment as to Petitioners Who Voted in Favor of the Merger](#).

⁴ Magnetar's counsel states in paragraph 12 of its [motion](#) that "Magnetar needs to be able to share in the control of these proceedings, which heretofore it has not been able to do," and in paragraph 15 reports, "Indeed, the Magnetar Funds understand that settlement discussions may be underway and they have not been invited in participate in any such conversations and have not been solicited for their opinion of the case or their settlement calculus."

⁵ It should be noted that Magnetar is now represented by the same law firm that serves as special counsel for Cavan, with Cavan's consent. See [May 26, 2015 Forum Report: Inviting Suggestions for Effective Management of Dell Appraisal Case](#).

brief until the end of January 2016,⁶ rather than the usual month, so that a court determination of eligibility and possible appeals will leave this issue open until long after a valuation.

- B. *The manager of petitioning accounts may be concerned about minimizing liability.* Assuming investors in the petitioning funds may seek to hold the fund manager responsible for amounts that would have been realized but were lost because the appraisal rights were not effectively established, then the fund manager may have a practical financial interest in minimizing the value of those potential claims. A lower settlement or valuation award, for example, would reduce the amount of the fund manager's possible liabilities to its investors.
- C. *Counsel to the challenged petitioners may have conflicting duties.* Counsel to the challenged petitioners has a professional duty to support the interests of the clients by which it is engaged, and as indicated in the sections above those interests may differ from those of the unchallenged claimants. Counsel for the challenged petitioners may also be concerned about its own financial interests to the extent that its investment of time and money in the case is based on anticipated rewards related to the realization of benefits for which its clients may prove to be ineligible.

I will of course welcome your questions as well as any comments, and look forward to reporting what is presented to support your interests.

GL – August 20, 2015

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⁶ See [August 19, 2015, In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Stipulation and Order for Scheduling the Motion for Partial Summary Judgment as to Petitioners Who Voted in Favor of the Merger.](#)