

Response to Proposal for Revised Management of Dell Appraisal Case

The comments some of you have offered on the proposals presented in last week's motion by petitioners managed by Magnetar Capital,¹ and on the preliminary summary of the issues they raised,² have been very helpful in defining the interests of Dell investors with unchallenged appraisal rights.

We will be asking counsel for the Cavan petitioner to present these interests for the court's consideration, and will appreciate your further comments on the following points and any additional concerns to refine what we report.

1. **Reliance upon counsel representing challenged petitioners:** The lawyers engaged to represent the petitioners managed by T. Rowe Price have a primary duty to serve those client interests. As indicated in the Magnetar motion and previous Forum reports,³ the recently discovered eligibility issues of the T. Rowe Price petitioners make their interests different from – and possibly opposed to – the interests of claimants with unchallenged appraisal rights. Counsel for the T. Rowe Price petitioners should therefore not be expected to also serve the unchallenged claimants as contemplated in their appointment as “Lead Counsel” prior to the disclosure of conflicting interests.
2. **Proposal of “Co-Lead Counsel” arrangement:** Questions have been raised about the need to create a new “Co-Lead” arrangement rather than simply appoint a substituted Lead Counsel to perform the duties that are defined by the court's existing Consolidation Order. The provisions of that Order already support the active involvement of any petitioner's counsel, so that substitution of a new Lead Counsel would allow counsel for the T. Rowe Price petitioners to participate as much as they could in the role of a newly defined “Co-Lead Counsel.” The simpler form of leadership may also be more efficient, of course, in terms of orderly progress as well as costs.
3. **Proposal to establish “Co-Lead Petitioners,” generally:** Nothing could be found in the existing Consolidation Order, or in the statute establishing appraisal rights,⁴ that provides for an official “lead” designation for petitioners. Whether permissible or not, the motion did not explain how the creation of this legal position would benefit the process or the interests of claimants. Many Forum participants, it should be noted, believe they can rely upon Delaware's appraisal of fair value partly because of the well-tested rules for an

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 the [August 20, 2015 Forum Report: Inviting Comments for Response to Dispute Between Dell Appraisal Petitioners](#).

³ See the [July 2, 2015 Forum Report: Delays in Management of Dell Appraisal Case](#).

⁴ See [Delaware General Corporation Law, § 262. Appraisal Rights](#).

orderly court proceeding that provides rights for all petitioners to be heard. Revisions to allow management of the process like a securities class action would raise concerns about ultimate investor interests in their commitments of long term capital to corporate enterprises.

4. **Consideration of candidate if court establishes “Lead Petitioner” control:** If the court decides to create authority for the proposed “Co-Lead Petitioners” or a single “Lead Petitioner,” it is assumed that any appointment would be subject to determining whether a candidate has any relationships with Dell or its private equity investors, or any direct or derivative interests in Dell’s debt securities. It is also assumed that the court would define a process for participation in a review by other petitioners whose rights would necessarily be conceded to the “Lead Petitioner.”

Simply stated, it appears that the existing Lead Counsel (a) has duties that conflict with the interests of unchallenged claimants and (b) has not been voluntarily providing information as expected of either a Lead Counsel or an officer of the court. We should of course rely upon the court to decide how this can be most effectively resolved, but for the court to do so investors must satisfy their responsibilities to inform the court of their interests.

GL – August 25, 2015

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