

## Reported Dell Settlement with Former Appraisal Petitioners

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In a court filing yesterday for the Dell appraisal case, it was reported that the court had conducted a telephone conference Monday morning with Stuart M. Grant of Grant & Eisenhofer, the Lead Counsel representing appraisal claimants, and two attorneys representing Dell for a “Hearing Regarding Proposed Settlement.”<sup>1</sup> Counsel representing the other petitioners were not informed of the conference and did not participate.

Asked yesterday about the conference, Mr. Grant responded that it concerned only “those who were denied entitlement to appraisal” and declined to provide any more information.<sup>2</sup>

Adding to the mystery, Dell sent a letter to the Court this morning with notice to counsel for each of the eligible petitioners asking for formal approval of a Dell settlement with all of the former petitioners, presenting a form of a proposed order but not providing any indication at all of the terms of settlement.<sup>3</sup>

Also this morning, at about the same time as the Dell filing and presumably before seeing it, counsel for the Magnetar petitioners sent another of its letters to the Court, arguing that the secret settlement and conference supported Magnetar’s previously asserted views that Lead Counsel has conflicting interests and that Magnetar should therefore be given control of the final phases of the case.<sup>4</sup>

Finally – at least at the time of this report’s drafting – Grant & Eisenhofer filed its opposition to Magnetar’s demands for discovery relating to G&E’s fee application as Lead Counsel, in which they mention “a settlement in return for a substantially reduced interest payment.”<sup>5</sup> This response does not indicate whether G&E’s representation of T Rowe Price in the settlement may require any change in the previous discovery responses of either G&E or T Rowe Price stating that Lead Counsel will be receiving no payments from T Rowe Price.

### Speculation about what is being settled

The reports of a secret settlement have naturally stimulated speculation, not only about its provisions but also about more basic questions. While investors awaiting payments for their Dell

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<sup>1</sup> See [June 27, 2016, In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Court of Chancery Judicial Action Form: T/C Hearing Regarding Proposed Settlement](#) (1 page, 36 KB, in [PDF](#) format).

<sup>2</sup> A copy of the email exchanges, which were explicitly not confidential, can be provided upon request. [These records were subsequently posted; see June 28, 2016 email exchanges with Stuart Grant as Lead Counsel.]

<sup>3</sup> See [June 29, 2016, In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Dell letter to Court with Form of Proposed Order Approving Settlement](#) (4 pages, 349 KB, in [PDF](#) format).

<sup>4</sup> See [June 29, 2016, In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Magnetar Funds' letter to Court Regarding Secret Settlement](#) (4 pages, 108 KB, in [PDF](#) format).

<sup>5</sup> See footnote #4 on page 5, [June 29, 2016, In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Petitioners' Opposition to the Magnetar Funds' Motion to Compel Discovery](#) (5 pages, 384 KB, in [PDF](#) format).

appraisal right may not have any reason to concern themselves with what Dell wants to pay former petitioners, the fact that these questions exist justifies our attention:

- ***Why would Dell offer the former petitioners anything to discourage their appeal of the court's decisions?*** The decision relating to the voting issues (approximately 30 million of the ineligible shares, compared with fewer than 1 million shares made ineligible by ownership errors) has been virtually unquestioned by legal experts, and any appeal of it is assumed to have a very low probability of success. The most likely result of an appeal, under the circumstances, would be to give Dell several more months of interest-free use of T Rowe Price funds.
- ***Why would Dell think T Rowe Price might risk losing another year of earnings on more than \$400 million of their investors' assets?*** For the same reasons that Dell might welcome an appeal, T Rowe Price would be expected to avoid both the continuing public attention to their errors and the financial exposure to more costs of “doing the right thing.”<sup>6</sup>
- ***What is there, in fact, to negotiate?*** There is some controversy among lawyers about whether rights to appeal a determination that a stockholder is not entitled to appraisal rights would run for 30 days after a final order on the case, which has not yet been entered, or 30 days from the date of the Court's May 11, 2016 Opinion entering a judgment that the T Rowe Price petitioners were not eligible.<sup>7</sup> Without guessing which of these legal positions might be right, observers have noted that the fact that such ambiguity exists suggests that someone concerned with preserving rights to appeal would normally file a notice to avoid risk – or at least support a viable negotiating position.
- ***Why is the Court being asked to approve the settlement?*** If the T Rowe Price parties are no longer petitioners, it is not clear why either they or Dell would want approval, or why the Court would have any need to consider the settlement. Alternatively, if they are still considered petitioners pending the final order in the case, it is assumed that they would need to make all the disclosures required for review of a proposed settlement with a petitioner in an appraisal case, but they clearly do not contemplate this.

While it probably is not needed, I will of course welcome suggestions of additional questions, and your speculations about possible explanations.

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<sup>6</sup> See [June 2, 2016 Wall Street Journal: "After Nearly \\$200 Million Flub, T. Rowe Price Seeks a Solution | Investment firm is likely to announce a plan to reimburse clients who lost out when it accidentally voted in favor of the 2013 buyout of Dell Inc."](#)

<sup>7</sup> The Conclusion of the Opinion states that the former T Rowe Price petitioners “do not possess appraisal rights, and judgment is entered against them.” See [May 11, 2016, In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Opinion Enforcing Dissenter Requirement](#) (70 pages, 625 KB, in [PDF](#) format).

## Practical considerations for eligible appraisal claimants

It is very likely that whatever Dell and T Rowe Price have negotiated will not have any influence on the amount Dell will be required to pay the former stockholders who are eligible for appraisal rights. However, this needs to be an informed determination.

Under these circumstances, all eligible claimants should be able to consider the following information:

1. A copy of any settlement agreement and related information – If the court must approve this agreement, it must be relevant to the interests of the eligible claimants, and you should therefore be able to determine whether you have any views to present for consideration.
2. Disclosure of all payment arrangements between T Rowe Price and Grant & Eisenhofer – Whether stated to be related to the appraisal case or not, you will want to know whether any previously unreported payment might influence their representation of your interests or justify reductions of the payments the firm is seeking from you and other non-client claimants.

It should be noted that I have continued to advise Cavan, the Forum's representative petitioner, that it is not in the interests of most eligible Dell appraisal claimants to support the Magnetar motion for their appointment as Co-Lead Petitioner. I do, however, believe that some of their discovery demands merit support, and also that we should remain open to considering support of requests for the Court's modification of its Lead Counsel appointment if Grant & Eisenhofer is unwilling to perform its duties to all claimants according to the Court's Consolidation Order.

The interests of eligible claimants are in fact very simple now. A final court order is needed for Dell's payment of what's due, and the only substantive open issue is the amount to be allocated for legal services and deducted from your payment. This should not require more than a few days from the time information is made available.

*GL – June 29, 2016*

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**NOTE:** Shortly after the report above was distributed, the filing of a Court Order approving the settlement between Dell and the former T. Rowe Price petitioners was made available, presenting the Court's careful explanations of the legal considerations for such approvals and the interests of other claimants that were considered:

- [June 29, 2016, In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Order Approving Settlement](#) (4 pages, 208 KB, in [PDF](#) format)

The update report to Forum participants suggested that consideration of claimant interests would therefore be limited to what may be relevant to their review of the remaining open issue concerning Lead Counsel's fee application for their allocations of costs.