

## Dell Decision to Rely Upon Court for Definition of Settlement Offer

[Dell's position relating to settlement obligations](#)  
[Need for court definition of conditions](#)

Dell has responded as promised to the questions reported last week about their obligation to offer other appraisal claimants the same terms of settlement as those given to T Rowe Price.<sup>1</sup>

### Dell's position relating to settlement obligations

These were the answers provided by Dell's attorney:<sup>2</sup>

1. *They will not provide a copy of the written settlement agreement because "the settlement agreement between Dell and the T. Rowe funds is, by its terms, confidential."*
2. *The court was not given a copy of the agreement, and its review and approval of the proposed settlement was based only on "[t]he summary of the settlement that was provided to the Court [which] was done orally as reflected by the transcript of record."*<sup>3</sup>
3. *"Dell has not entered into any other settlement with dissenting shareholders in connection with the going private transaction."*

It should be noted that Dell and T Rowe Price have not disputed the obligation to offer all former stockholders the same terms of settlement, but they continue to argue that the terms they must offer should be narrowly defined as \$.88 per share upon acceptance of only the \$13.75 per share offer price. There is no indication, though, that they have made even this narrowly defined offer available to other former stockholders.<sup>4</sup>

---

<sup>1</sup> See [September 19, 2016 Forum Report: Rights to Payment for Waiving Appeal of Dell Appraisal Decisions](#).

<sup>2</sup> See [September 14-26, 2016 email exchanges among Gary Lutin, John D. Hendershot and Stuart M. Grant](#) (4 pages, 190 KB, in [PDF](#) format); unless otherwise indicated, quoted statements are from Mr. Hendershot's September 21, 2016 email. Note: there has been no further response from Dell or T Rowe Price.

<sup>3</sup> Dell's representative stated during the June 27, 2016 conference that the settlement was negotiated with "former stockholders" who "still have appeal rights," and that "what we have done is agreed that we will pay those folks in exchange for releases where they release their appeal rights. We have agreed to pay them an amount of interest. It's not the statutory interest, it's -- I think it works out to be between 2 and 3 percent, but the grand total is 88 cents per share, and it's \$28 million in the aggregate." See pages 4-5 of the [June 27, 2016 \(reported June 29, 2016\), In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Transcription of Teleconference Regarding Proposed Settlement](#) (23 pages, 67 KB, in [PDF](#) format). Subsequent discussions reported in the transcript address the application of these terms to the T Rowe Price accounts that had been determined ineligible based on either ownership or voting issues, but do not indicate whether the release of rights to appeal applied to (i) only the [July 28, 2015 Order](#) relating to ownership issues, (ii) only the [May 11, 2016 Opinion](#) relating to voting issues, (iii) only the [May 31, 2016 Order](#) denying interest accruals, (iv) all or some combination of those court decisions, or (v) all decisions that would be subject to appeal upon the court's final order in the case.

<sup>4</sup> It can be reasonably assumed that, if offered, many former Dell stockholders would have readily accepted this narrowly defined settlement since its terms would clearly benefit the many claimants that shared the same fate as T Rowe Price in being determined entitled to only the \$13.75 per share offer price. For example, three claimants with 752,691 shares were determined ineligible for "similar reasons" in the same [July 28, 2015 Order](#) that dismissed five T Rowe Price accounts based on ownership issues, in a [decision the court itself thought should be appealed](#).

## Need for court definition of conditions

In any event, Dell and T Rowe Price were advised of the view that the information they have chosen to provide, to the court and to the appraisal claimants, “cannot support any definition of terms other than either (a) a payment by Dell of \$.88 per share for a claimant’s waiver of rights to appeal the Court’s determination of what Dell is obligated to pay that claimant, or (b) participation in the \$28 million that Dell paid T Rowe Price and Lead Counsel to waive appeals.”<sup>5</sup>

Under these circumstances, on September 22 Dell was encouraged to choose between proceeding with an offer based on either of these available definitions of terms or, alternatively, providing credible support of a different definition. Dell was also advised that if it did not make this choice itself by September 26, the Forum’s representative petitioner, Cavan, would have to ask the court to make that decision.<sup>6</sup>

Since Dell has not made that necessary choice, Cavan’s counsel will be proceeding to seek the court’s guidance.

The need to initiate this additional distraction from the concluding resolution of what should be a model appraisal case is especially frustrating, since it could have been avoided if Lead Counsel had followed the court’s explicit instructions in the June 27 conference call to report the proposed settlement to other petitioners and ask if they wanted to participate in another call with the court before proceeding with a formal request for an order to approve a settlement.<sup>7</sup> Unfortunately, I was not aware of the court’s provision for hearing other parties until I obtained an unpublished copy of the transcript directly from the court on July 6. (The transcript was not publicly filed in the court docket until July 12, shortly after being posted on the Forum website and referenced in a Forum report.<sup>8</sup>) By that time, the June 29 order had been issued and it therefore seemed most practical to encourage a resolution by the parties, a decision that resulted in more than two months of fruitless efforts. I offer my regrets to all the claimants who are still waiting for their payment of fair value.

*GL – September 28, 2016*

Gary Lutin  
Chairman, The Shareholder Forum  
575 Madison Avenue, New York, New York 10022  
Tel: 212-605-0335  
Email: [gl@shareholderforum.com](mailto:gl@shareholderforum.com)

---

<sup>5</sup> See the September 22, 2016 email of Gary Lutin to John D. Hendershot in the previously referenced [September 14-26, 2016 email exchanges](#).

<sup>6</sup> See the email referenced above in footnote 5.

<sup>7</sup> The court stated “Tell the ... other folks as soon as you can that we’ve had this call. Tell them that I’m more than happy to have another call with them, and then we’ll go forward from there.” See page 18 of the previously referenced [June 27, 2016 Transcription](#).

<sup>8</sup> See the “[Need to know what was offered to ineligible clients](#)” section of the [July 12, 2016 Forum Report: Investigating Opportunities to Negotiate an Extra \\$.88 per Share](#).