

## Assuring Orderly Progress of the Dell Appraisal Case

Following this week's report that the lead Petitioners in the Dell appraisal case had voted their shares in favor of the merger,<sup>1</sup> we have reviewed the interests of Forum participants with dissenter rights to appraisal of their Dell investments, as well as the requirements of a Petitioner's fiduciary responsibilities to manage the appraisal case for the benefit of all claimants. It is our conclusion that claimants cannot have confidence in the existing lead Petitioners' continuing responsibility for the interests of other claimants, and that other Petitioners should therefore be prepared to assume those responsibilities.

This conclusion was based on (a) the assumption that the existing lead Petitioners would either be dismissed from the case or preoccupied for some time with legal disputes of their eligibility,<sup>2</sup> (b) questions about why the lead Petitioners did not voluntarily disclose the recently reported "discrepancy" in their signed statements about voting, and (c) the likelihood that the court itself may wish to consider alternatives to assure the integrity and judicial efficiency of the proceeding.

To be prepared for more active involvement in managing the case, Cavan Partners, the Petitioner that initiated the Dell appraisal proceedings for Shareholder Forum participants, has engaged Lowenstein Sandler as special counsel for advice on assuring the orderly progress of the Dell appraisal case. The firm's partner [Lawrence M. Rolnick](#) has agreed to assume responsibility for the engagement, assisted by his partner [Steven M. Hecht](#). Both attorneys are recognized for their expertise in Delaware appraisal proceedings, and for their leadership as contributing authors of the respected [Appraisal Rights Litigation Blog](#).

The provisions of this engagement allow for other Petitioners in the Dell case to share the special counsel services, encouraging a collaborative process for the Petitioners to satisfy their

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<sup>1</sup> See the [May 4, 2015 Forum Report: Questions Raised About Status of Lead Petitioners](#).

<sup>2</sup> Although the legal issues raised by an appraisal claimant's vote in favor of a transaction were not relevant to our review of lead petitioner viability, many Forum participants are of course interested in the broader marketplace and public purpose implications of this case. Many experts have speculated that a [reported statement](#) of Stuart Grant as counsel to T Rowe Price about a "rock solid" case means that they will be basing their arguments on recent "appraisal arbitrage" decisions. In those situations, claimants bought shares after the record date for voting and in the absence of any voting rights of their own were able to base their claims upon beneficial ownership interests in a "fungible bulk" of stock owned by the stockholder of record, DTC/Cede, which included shares that had not been voted in favor of the transaction. It is assumed that an argument could be presented interpreting those cases to mean also that a beneficial owner who controls votes on the record date can vote in favor of a transaction and nevertheless seek "dissenter" rights to appraisal based on negative votes of other "fungible bulk" shareholders. However, some observers consider this argument unlikely, especially since Mr. Grant's firm has itself presented compelling arguments against this extended application of the "arbitrage" cases in a recently filed brief defending eligibility challenges of a few T Rowe Price petitioners based on failure to maintain continuous ownership. That brief (a) provides facts about the segregation of their specified appraisal shares from the "fungible bulk," (b) cites case law that the actions of beneficial owners should be ignored only when reliance upon the record holder's acts is necessary to avoid confusion about actions, and (c) argues that "equitable principles" should be applied to avoid punishing – or presumably rewarding – a beneficial owner for acts of others without its knowledge. (See [April 21, 2015 \[4/28/2015 Public Version\] In Re: Appraisal of Dell, Inc. \(Consol. C. A. No. 9322-VCL\): Petitioners Answering Brief in Opposition to Respondent's Motion for Partial Summary Judgment on Entitlement Issues](#).)

fiduciary responsibilities to all the claimants who have legitimate dissenter rights to appraisal. We will be inviting the other Petitioners to consider this alternative, and will of course encourage this or any other form of collaboration to support the orderly progress of this case.

As always, I will welcome your questions and suggestions.

*GL – May 8, 2015*

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